

# HOUSE JOURNAL

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SEVENTY-FOURTH LEGISLATURE, REGULAR SESSION

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## PROCEEDINGS

SIXTY-FIFTH DAY — WEDNESDAY, MAY 3, 1995

The house met at 10 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 277).

Present — Mr. Speaker; Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgenuth; Wolens; Woolley; Yarbrough; Yost; Zbrank.

The invocation was offered by Dr. Jerry Hardwick, Campus Crusade for Christ, San Antonio, as follows:

Our Heavenly Father, as we humbly bow our heads before you, we do so to acknowledge that you are our God and that we stand in need of you. You are King of Kings and Lord of Lords, and all authority comes from you. In your sovereign will you have chosen to delegate some of that authority to these who serve the citizens of Texas. Lord, there are many pressing and important issues before these leaders to consider this day. Issues which will impact the lives of many people, in many ways. We are comforted to know that you have not left us to ourselves but you are actively involved in our lives. And that if a sparrow cannot fall to the ground without your notice, we certainly believe that you notice when men and women set their hand to the awesome plow of trying to govern this great state. You are ready to guide us as we choose to order our lives according to your will. You have promised in your word that you are willing to give us wisdom if we will only ask. You also assure us that the hearts of our leaders are in your hands, and that you move them according to your own will. I pray that you will by your spirit so move in their hearts, and give them such wisdom from above that they would make decisions which would be right, just and merciful and that at the end of this day each would know that you have led them through it by your almighty and loving power.

I pray this in the Name of Jesus my Lord, Amen.

### **CAPITOL PHYSICIAN**

Speaker Laney presented Dr. James Womack of Bandera as the "Doctor for the Day."

The house welcomed Dr. Womack and thanked him for his participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

### **INTRODUCTION OF GUESTS**

The speaker recognized Representative Kubiak, who introduced a delegation from Washington County.

**HCR 191**, recognizing May 3, 1995, as Washington County Day, having been previously adopted, was read.

### **SIGNED BY THE SPEAKER**

The speaker signed in the presence of the house, after giving due notice thereof, the following enrolled bills and resolution:

**HB 921, HB 1264, HCR 189, SB 366, SB 872, SB 1229, SB 1329**

### **HR 785 - ADOPTED**

Representative Heflin moved to suspend all necessary rules to take up and consider at this time **HR 785**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Heflin,

**HR 785**, Proclaiming Friday, May 5, 1995, as Katy Volunteers in Public Schools Day.

The resolution was adopted without objection.

On motion of Representative Culberson, the names of all the members of the house were added to **HR 785** as signers thereof.

### **INTRODUCTION OF GUEST**

The speaker recognized Representative Giddings, who introduced Tony Dorsett.

**HR 672**, welcoming Tony Dorsett to the State Capitol, having been previously adopted, was read.

Mr. Dorsett addressed the house briefly.

### **HR 780 - ADOPTED**

Representative Patterson moved to suspend all necessary rules to take up and consider at this time **HR 780**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Patterson,

**HR 780**, Commending the Honorable Thomas Walters.

The resolution was adopted without objection.

On motion of Representative Chisum, the names of all the members of the house were added to **HR 780** as signers thereof.

### HOUSE BILLS ON FIRST READING

The following house bills were today laid before the house, read first time, and referred to committees:

By Gallego,

**HB 3234**, A bill to be entitled An Act Relating to the election of directors of the Hudspeth County Underground Water Conservation District No. 1.

To Committee on Natural Resources.

By Hightower,

**HB 3235**, A bill to be entitled An Act relating to the creation of a judicial district composed of Polk, Trinity, and San Jacinto counties and to the composition of the 9th Judicial District and the Second 9th Judicial District.

To Committee on Judicial Affairs.

### RESOLUTIONS REFERRED TO COMMITTEE

The following resolutions were laid before the house and referred to committee:

By Black,

**HCR 190**, Selecting the Texas State Artists for 1994 and 1995.

To Committee on Rules and Resolutions.

By D. Jones and B. Turner,

**HCR 193**, In memory of H. L. "Hub" King.

To Committee on Rules and Resolutions.

By Dear,

**HR 767**, In memory of Fort Worth Police Department Officer Jessie D. Moorman.

To Committee on Rules and Resolutions.

By Black,

**HR 768**, In memory of Dr. Thomas Clark Graves.

To Committee on Rules and Resolutions.

By Davis,

**HR 769**, In memory of Dallas Police Department Senior Corporal David R. Galvan.

To Committee on Rules and Resolutions.

By Farrar,

**HR 773**, Congratulating Gina Tran.

To Committee on Rules and Resolutions.

By Tillery,

**HR 775**, In memory of Dallas Police Department Senior Corporal Thomas Bond.

To Committee on Rules and Resolutions.

By Kuempel,

**HR 776**, Honoring Lucille Biegel.

To Committee on Rules and Resolutions.

By S. Turner,

**HR 778**, Honoring Dr. Joann Horton.

To Committee on Rules and Resolutions.

By Raymond,

**HR 779**, In memory of Reserve Officer Verval Lee Estes of the Orange Grove Police Department.

To Committee on Rules and Resolutions.

### SENATE BILLS ON FIRST READING

The following senate bills were today laid before the house, read first time, and referred to committees:

**SB 224** to Committee on Juvenile Justice and Family Issues.

**SB 442** to Committee on Licensing and Administrative Procedures.

**SB 526** to Committee on Business and Industry.

**SB 553** to Committee on Insurance.

**SB 659** to Committee on Public Health.

**SB 755** to Committee on County Affairs.

**SB 813** to Committee on Public Safety.

**SB 828** to Committee on State Affairs.

**SB 954** to Committee on Transportation.

**SB 988** to Committee on State Affairs.

**SB 993** to Committee on Land and Resource Management.

**SB 1291** to Committee on Public Health.

**SB 1302** to Committee on Public Health.

**SB 1365** to Committee on Insurance.

**SB 1426** to Committee on Business and Industry.

**SB 1454** to Committee on Public Health.

**SB 1504** to Committee on Public Safety.

**SB 1628** to Committee on Energy Resources.

**SB 1660** to Committee on Natural Resources.

**SB 1679** to Committee on Land and Resource Management.

**RESOLUTIONS REFERRED TO COMMITTEES**

The following resolutions were laid before the house and referred to committees:

**SCR 80**, Encouraging and urging the Congress to adopt legislation facilitating acquisition of the Bureau of Reclamation interests.

To Committee on Natural Resources.

**SCR 89**, Directing the Texas Department of Transportation to repair and maintain in a safe condition for highway traffic the suspension bridges in Shackelford, Mills, and San Saba counties.

To Committee on Transportation.

**HB 3082 - RECOMMITTED**

Representative Holzhauser moved to recommit **HB 3082** to the Committee on Land and Resource Management from the Committee on Calendars.

The motion prevailed without objection.

**HB 2129 - RECOMMITTED**

Representative Grusendorf moved to recommit **HB 2129** to the Committee on Ways and Means from the Committee on Local and Consent Calendars.

The motion prevailed without objection.

**MESSAGE FROM THE SENATE**

Austin, Texas, May 3, 1995

The Honorable Speaker of the House of Representatives  
House Chamber

The Honorable  
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has passed the following:

**SB 94** by Ellis, et al., relating to the regulation of political contributions, political expenditures, and political advertising in connection with certain judicial candidates and officeholders and to personal financial statements filed by certain judicial officeholders; providing civil and criminal penalties.

**SB 1346** by West, Royce, et al., relating to the creation of sports authorities and sports facility enterprise zones and to the financing of sports facilities.

**HCR 25** by Counts, commending Bill Sarpalius for his service in the Texas Senate and the United States Congress.

**HCR 58** by Counts, commending Howard County Junior College on its 50th Anniversary.

**HCR 143** by Goodman, designating March 29 of this year and each succeeding year as Love the Children Day in Texas.

**HCR 161** by Ramsay and Averitt, in memory of M. A. "Catfish" Smith.

**HCR 163** by Ramsay, congratulating the Clarksville High School boys' basketball team.

**HCR 181** by Carona and McCall, honoring the late Herb Walne, Jr., and the opening of Herb's Paint & Body Shop #4.

Respectfully,  
Betty King  
Secretary of the Senate

### **CSHB 2441 - VOTE RECONSIDERED**

Representative R. Cuellar moved to reconsider the vote by which **CSHB 2441** failed to pass to engrossment Tuesday, May 2.

The motion to reconsider prevailed.

### **CSHB 2441 ON SECOND READING**

The speaker laid before the house, on its second reading and passage to engrossment, the complete committee substitute for **HB 2441**.

**CSHB 2441**, A bill to be entitled An Act relating to the amendment, extension, or renewal of a permit for a solid waste facility.

#### **Amendment No. 6**

Representative R. Cuellar offered the following amendment to **CSHB 2441**:

Amend **CSHB 2441** (House Committee Printing) as follows:

- (1) On page 1, line 6, strike "Subsections (e)-(g)" and substitute "Subsections (e) and (f)".
- (2) On page 1, line 15, strike "knowingly".
- (2) On page 2, line 6, strike "knowingly".
- (4) On page 2, strike lines 11-16.

Amendment No. 6 was adopted without objection.

#### **Amendment No. 7**

Representative Gallego offered the following amendment to **CSHB 2441**:

Amend **CSHB 2441** as follows:

- (1) On page 1, line 17, strike "and".
- (2) On page 1, line 20, strike the period and substitute " ; and".
- (3) On page 1, between lines 20 and 21, insert:  
(5) whether the site is suitable for the facility.
- (4) On page 2, line 7, strike "or".
- (5) On page 2, line 10, strike the period and substitute " ; or".
- (6) On page 2, between lines 10 and 11, insert:  
(5) the site is not suitable for the facility."

Amendment No. 7 was adopted without objection.

#### **Amendment No. 8**

Representative Zbranek offered the following amendment to **CSHB 2441**:

Amend **CSHB 2441** as follows:

- (1) amend Section 1, page 1, line 8, by inserting "municipal solid waste" between "a" and "permit".

(2) amend Section 1, page 1, line 22 by inserting "municipal solid waste" before the word "permit".

Amendment No. 8 was adopted without objection.

#### **Amendment No. 9**

Representative Puente offered the following amendment to **CSHB 2441**:

Amend **CSHB 2441** as follows:

(1) In SECTION 1 of the bill, in proposed Section 361.088 of the Health and Safety Code, on page 1, on line 17, delete at the end of the sentence the word "and".

(2) On page 1, line 20, delete at the end of the sentence the "." and add a ";" and the word "and".

(3) On page 1, between line 20 and 21, add the following: (5) public health and public safety.

(4) On page 2, line 7 delete at the end of the sentence the word "or".

(5) On page 2, line 10 delete at the end of the sentence the "." and add the word "or".

(6) On page 2, between line 10 and line 11, add the following: (5) There is no adverse effect to public safety and public health.

Amendment No. 9 was adopted without objection.

A record vote was requested.

**CSHB 2441**, as amended, was passed to engrossment by (Record 278): 86 Yeas, 55 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Averitt; Berlanga; Black; Brady; Carona; Carter; Chisum; Clemons; Coleman; Combs; Corte; Counts; Crabb; Cuellar, H.; Cuellar, R.; Danburg; Davila; Dear; Delisi; Duncan; Eiland; Elkins; Farrar; Gallego; Goolsby; Gray; Grusendorf; Hamric; Hartnett; Heflin; Hilbert; Hilderbran; Hill; Holzheuser; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Junell; King; Krusee; Kubiak; Kuempel; Lewis, R.; Madden; Marchant; McCall; McCoulskey; McDonald; Mowery; Munoz; Nixon; Oakley; Oliveira; Park; Patterson; Place; Rabuck; Ramsay; Romo; Rusling; Saunders; Serna; Shields; Siebert; Smithee; Solis; Solomons; Swinford; Telford; Torres; Uher; Walker; West; Williamson; Willis; Wohlgemuth; Wolens; Woolley; Yost; Zbranek.

Nays — Alonzo; Alvarado; Bailey; Bosse; Brimer; Conley; Cook; Craddick; Culbertson; Davis; De La Garza; Denny; Driver; Dutton; Edwards; Ehrhardt; Finnell; Giddings; Glaze; Goodman; Greenberg; Gutierrez; Haggerty; Harris; Hawley; Hernandez; Hirschi; Horn; Hudson; Jones, J.; Kamel; Lewis, G.; Longoria; Luna; Moreno; Naishtat; Pickett; Pitts; Price; Puente; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Sadler; Seidlits; Staples; Talton; Thompson; Tillery; Turner, B.; Turner, S.; Van de Putte; Yarbrough.

Present, not voting — Mr. Speaker(C).

Absent — Dukes; Hightower; Hochberg; Maxey; Moffat; Ogden; Stiles; Wilson.

**STATEMENTS OF VOTE**

When Record No. 278 was taken, I was in the house but away from my desk. I would have voted no.

Maxey

When Record No. 278 was taken, I was away from my desk. I would have voted yes.

Moffat

When Record No. 278 was taken, I was in the house but away from my desk. I would have voted yes.

Stiles

**HR 787 - ADOPTED**

Representative Davila moved to suspend all necessary rules to take up and consider at this time **HR 787**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Davila,

**HR 787**, Honoring the 1995 MEX-TEX Conference.

The resolution was adopted without objection.

**HB 1899 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1899**, A bill to be entitled An Act relating to a deferred retirement option plan for members of retirement systems for police officers in certain municipalities.

A record vote was requested.

The bill was read third time and was passed by (Record 279): 142 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culbertson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles;



Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent — Dukes; Haggerty; Hightower; Hudson; Lewis, R.; Ogden; Seidlits.

### **HB 1479 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1479**, A bill to be entitled An Act relating to tuition and fee exemptions at public institutions of higher education for certain students.

The bill was read third time and was passed.

### **HB 1589 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1589**, A bill to be entitled An Act relating to the provision of workers' compensation benefits for certain state employees and to the creation, powers, and duties of the State Office of Risk Management.

The bill was read third time and was passed.

### **HB 1644 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1644**, A bill to be entitled An Act relating to the improper disposal of medical waste; creating a criminal penalty.

The bill was read third time and was passed.

### **HB 1320 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1320**, A bill to be entitled An Act relating to unissued general obligation and revenue bonds of the state.

The bill was read third time and was passed.

### **HB 1765 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1765**, A bill to be entitled An Act relating to the regulation of the fitting and dispensing of hearing instruments.

The bill was read third time and was passed.

### **HB 2462 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 2462**, A bill to be entitled An Act relating to the allocation of certain funds to certain institutions of higher education.

A record vote was requested.

The bill was read third time and was passed by (Record 280): 146 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent — Bailey; Dukes; Ogden.

### HB 2189 ON THIRD READING

The speaker laid before the house, on its third reading and final passage,

**HB 2189**, A bill to be entitled An Act relating to the operation and management of certain conservation and reclamation districts.

The bill was read third time.

#### Amendment No. 1

Representative Holzheuser offered the following amendment to the bill:

Amend **HB 2189** on 3rd reading by adding the following sections appropriately numbered and renumber existing sections of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter B, Chapter 56, Water Code, is amended by adding Section 56.033 to read as follows:

Sec. 56.033. ALTERNATE PROCEDURE FOR CREATION. (a) The landowners of a defined area of territory not included in a district may file with the commissioners court a petition requesting an election on the creation of a district. The petition must:

(1) be signed by registered voters residing in the territory equal in number to at least five percent of the number of votes received in the territory to be included by all candidates in the most recent gubernatorial general election; and

(2) described by metes and bounds the territory to be included in the district.

(b) The commissioners court shall call and hold a hearing to determine if the petition meets the requirements of Subsection (a).

(c) If the commissioners court determines the petition meets the requirements of Subsection (a), the court shall order an election held in the proposed district to determine whether or not the district should be created and whether or not the district should issue bonds and levy taxes to pay for the bonds.

(d) the provisions of this subchapter, other than Section 56.019, govern the hearing and election.

SECTION \_\_\_\_ Chapter 56, Water Code, is amended by adding Subchapters J and K to read as follows:

**SUBCHAPTER J. ALTERNATE PROCEDURE FOR ANNEXATION  
BY EXISTING DISTRICT**

Sec. 56.751. PETITION FOR ANNEXATION. The landowners of a defined area of territory not included in a district may file with the secretary of the board a petition requesting an election on the inclusion of the territory in a district. The petition must:

(1) be signed by registered voters residing in the territory equal in number to at least five percent of the number of votes received in the territory to be included by all candidates in the most recent gubernatorial general election; and

(2) describe by metes and bounds the territory to be included in the district.

Sec. 56.752. HEARING ON DETERMINATION OF PETITION. (a) The board shall hear the petition to determine if the petition meets the requirements of Section 56.751.

(b) The board by order shall set the time and place of the hearing on the petition. The hearing shall be held not less than 30 days after the date of the order.

Sec. 56.753. NOTICE OF HEARING. (a) The secretary of the board shall issue notice of the time and place of the hearing. The notice must describe the territory proposed to be annexed.

(b) The secretary shall post copies of the notice in three public places in the district and one copy in the public place in the territory proposed to be annexed. The notices must be posted for at least 15 days before the day of the hearing.

(c) The notice must be published one time in a newspaper with general circulation in the county. The notice must be published at least 15 days before the day of the hearing.

Sec. 56.754. ELECTIONS TO APPROVE ANNEXATION OF TERRITORY. (a) If the board determines the petition meets the requirements of Section 56.751, the board shall order elections to approve the annexation.

(b) Annexation of the territory must be approved by a majority vote of the voters at a separate election held in the district and by a majority vote of the voters at a separate election held in the territory proposed to be added.

(c) If the district has outstanding debts or taxes, the election to approve annexation also determines whether the territory to be added assumes its proportion of the debts or taxes if the territory is added to the district.

Sec. 56.755. NOTICE AND PROCEDURE OF ELECTION. The notice of the election, the manner and the time of giving the notice, the manner of holding the election, and qualifications of the voters are governed by Subchapter E, Chapter 58.

Sec. 56.756. LIABILITY OF ADDED TERRITORY. The added territory shall bear its pro rata part of all indebtedness or taxes that may be owed, contracted, or authorized by the district to which it is added.

#### **SUBCHAPTER K. CONSOLIDATION OF DISTRICTS**

Sec. 56.801. PETITION. Consolidation is initiated by a petition requesting an election on the question. The petition must be signed by registered voters residing in either district proposed to be consolidated equal in number to at least five percent of the number of votes received in the district by all candidates in the most recent gubernatorial general election. The petition must be presented to the commissioners court.

Sec. 56.802. ELECTION ORDER; NOTICE. (a) If the commissioners court determines the petition meets the requirements of Section 56.801, the commissioners court shall:

(1) issue an order for an election to be held on the same day in each district included in the proposed consolidated district; and

(2) give notice of the election.

(b) The ballot in the election shall be printed to permit voting for or against the proposition: "Consolidation of \_\_\_\_\_ (names of districts) into a single drainage district."

Sec. 56.803. CANVASS; RESULT. (a) The commissioners court shall canvass the returns of the election. The commissioners shall publish the results separately for each district.

(b) If the majority of votes cast in each district favor the consolidation, the commissioners court shall declare the districts consolidated.

Sec. 56.804. TITLE TO PROPERTY; ASSUMPTION OF DEBT. Title to all property of the consolidated districts vests in the consolidated district. The consolidated district assumes and is liable for the outstanding indebtedness of the consolidating districts.

Amendment No. 1 was adopted without objection.

**HB 2189**, as amended, was passed.

#### **HB 1661 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1661**, A bill to be entitled An Act relating to the adoption of the Texas Uniform Unincorporated Nonprofit Association Act.

The bill was read third time and was passed.

#### **HB 955 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 955**, A bill to be entitled An Act relating to charges for sales of motor vehicle fuel involving certain means of payment; providing a criminal penalty.

The bill was read third time and was passed.

**HB 398 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 398**, A bill to be entitled An Act relating to the temporary exemption of certain high-cost gas from Gas Production tax.

The bill was read third time and was passed. (Puente recorded voting no; Finnell, present, not voting)

**HB 2669 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 2669**, A bill to be entitled An Act relating to the regulation by the Texas State Board of Medical Examiners of certain physicians located in other jurisdictions who perform acts constituting the practice of medicine in this state.

The bill was read third time and was passed.

**HB 1013 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1013**, A bill to be entitled An Act relating to the issuance of obligations by the Texas Public Finance Authority.

The bill was read third time and was passed. (Corte recorded voting no)

**STATEMENT BY REPRESENTATIVE MOFFAT**

Although **HB 1013** is a good bill overall because it consolidates services and saves the citizens of Texas money, it contains language which I believe to be unnecessary. That language being a good faith effort will be made to ensure that 20% of the funds should be allocated to HUB's.

Moffat

**HB 1259 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1259**, A bill to be entitled An Act relating to security obligations of a licensed seller of checks.

The bill was read third time and was passed.

**HB 1608 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1608**, A bill to be entitled An Act relating to the regulation of the sale of checks.

The bill was read third time and was passed.

**HB 2294 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 2294**, A bill to be entitled An Act relating to the regulation of groundwater.

The bill was read third time.

**Amendment No. 1**

Representative Howard offered the following amendment to the bill:

Amend **HB 2294** as follows:

On page 49, line 7, after "lien" strike "is perfected by filing" and insert "arises and attaches upon recordation".

Amendment No. 1 was adopted without objection.

**HB 2294**, as amended, was passed.

**HB 2309 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 2309**, A bill to be entitled An Act relating to the basic skills assessment of students at institutions of higher education and to programs for students in need of enrichment in those basic skills.

The bill was read third time and was passed. (Corte recorded voting no)

**HB 1719 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1719**, A bill to be entitled An Act relating to altering the business form of the holder of a permit allowing the sale or service of alcoholic beverages for on-premise consumption.

The bill was read third time and was passed.

**HB 869 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 869**, A bill to be entitled An Act relating to coordinated delivery of health and human services programs.

The bill was read third time.

**Amendment No. 1**

On behalf of Representative Maxey, Representative McDonald offered the following amendment to the bill:

Amend **CSHB 869**, on third reading, on page 2, line 6 by striking subsection (2) and inserting the following:

(2) develop a coordinated plan for the delivery of health and human services, including transition services which prepare special education students for adulthood, in the entity's jurisdiction; and

Amendment No. 1 was adopted without objection.

**HB 869**, as amended, was passed. (Corte recorded voting no)

**HB 1441 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1441**, A bill to be entitled An Act relating to the financing of alternative fuels projects by the Texas Public Finance Authority on behalf of state agencies and certain political subdivisions of the state.

The bill was read third time and was passed. (Horn and Reyna recorded voting no)

#### **HB 384 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 384**, A bill to be entitled An Act relating to eligibility for service retirement from the Employees Retirement System of Texas.

The bill was read third time and was passed. (Horn and Reyna recorded voting no)

#### **HB 2053 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 2053**, A bill to be entitled An Act relating to the identification of a motor vehicle that is issued exempt license plates.

The bill was read third time and was passed.

#### **HB 369 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 369**, A bill to be entitled An Act relating to the operation and funding of small employer health benefit plans.

The bill was read third time and was passed. (Swinford recorded voting yes)

#### **HB 1753 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1753**, A bill to be entitled An Act relating to the punishment of the offense of assault committed by or against a public servant.

The bill was read third time and was passed.

#### **HB 2318 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 2318**, A bill to be entitled An Act relating to work programs for certain persons committed to the Texas Youth Commission and to tax credits and abatements for businesses participating in the programs.

The bill was read third time and was passed.

#### **HB 1966 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1966**, A bill to be entitled An Act relating to the use of optical imaging and other electronic means for creating records in municipal courts.

The bill was read third time.

**Amendment No. 1**

Representative Pitts offered the following amendment to the bill:

Amend **HB 1966** by adding new a new Section 3 as follows: renumbering subsequent sections accordingly.

SECTION\_\_\_\_. Subchapter D, Chapter 35, Business & Commerce Code, Section 35.48 is amended to read as follows:

Sec. 35.48. Retention of Business Records.

(a) In this section:

(1) "Business record" means letters, words, sounds, or numbers, or the equivalent of letters, words, sounds, or numbers, recorded in the operation of a business by:

- (A) handwriting;
- (B) typewriting;
- (C) printing;
- (D) photostat;
- (E) photograph;
- (F) magnetic impulse;
- (G) mechanical or electronic recording; [or]
- (H) digitized optical image; or
- (I) another form of data compilation.

(2) "Reproduction" means a counterpart of an original business record produced by:

(A) production from the same impression or the same matrix as the original;

- (B) photograph, including an enlargement or miniature;
- (C) mechanical or electronic rerecording;
- (D) chemical reproduction; [or]
- (E) digitized optical image; or
- (F) another technique that accurately reproduces the original.

(b) A business record required to be kept by state law may be destroyed at any time after the third anniversary of the date the record was created unless a law or regulation applicable to the business record prescribes a different retention period or procedure for disposal.

(c) A state law requiring retention of a business record is satisfied by retention of a reproduction of the business record.

Amendment No. 1 was adopted without objection.

**HB 1966**, as amended, was passed.

**HB 713 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 713**, A bill to be entitled An Act relating to the regulation of private investigators and private security agencies; creating a criminal penalty.

The bill was read third time.



**Amendment No. 1**

Representative Horn offered the following amendment to the bill:

Amend **CSHB 713** on third reading by inserting the following new SECTION and renumbering accordingly to read as follows:

SECTION\_\_\_\_. Section 14, Private Investigators and Private Security Agencies Act (Article 4413(29bb), V.T.C.S.), is amended by amending Subsections (b) and (c) to read as follows:

(b) An applicant who applies for a license to engage in the business of an investigation company or his manager shall have three (3) years consecutive experience prior to the date of said application in the investigative field, as an employee, manager, or owner of an investigations company, or have one year of experience and successfully completed a training program approved by the board, or other requirements as shall be set by the board.

(c) An applicant who applies for a license to engage in the business of a security services contractor or his manager shall have two (2) consecutive years experience prior to the date of said application in each security services field for which he applies, as an employee, manager, or the owner of a security services contractor, or have one year of experience and successfully completed a training program approved by the board, or other requirements as shall be set by the board. The experience of the applicant must have been obtained legally and must be reviewed by the board or by the director and determined to be adequate to qualify the applicant to engage in the business of a security services contractor.

Amendment No. 1 was adopted without objection.

**Amendment No. 2**

On behalf of Representative Talton, Representative Oakley offered the following amendment to the bill:

Amend **HB 713** on third reading, on page 1, line 10, after "hours", by adding ", not to exceed 5 hours,".

Amendment No. 2 was adopted without objection.

**HB 713**, as amended, was passed.

**HB 1345 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1345**, A bill to be entitled An Act relating to tests for human immunodeficiency virus infection of pregnant women or on delivery of a child.

The bill was read third time.

**Amendment No. 1**

Representative Hamric offered the following amendment to the bill:

Amend **HB 1345** on third reading as follows:

(1) Amend proposed Subsection 81.090(j), Health & Safety Code, as amended on Second Reading, to read as follows:

(j) Before the blood sample is taken, the health care provider shall distribute to the patient printed materials about AIDS, HIV, and syphilis and shall verbally notify the patient that an HIV test shall be performed if the patient does not object. If the patient objects, the patient shall be referred to an anonymous testing facility or instructed about anonymous testing methods. The health care provider shall note on the medical records that the distribution of printed materials was made and that verbal notification was given. The materials shall be provided to the health care provider by the Texas Department of Health and shall be prepared and designed to inform the patients about:

(1) the incidence and mode of transmission of AIDS, HIV, and syphilis;

(2) how being infected with HIV, AIDS, or syphilis could affect the health of their child;

(3) the available cure for syphilis;

(4) The available treatment to prevent maternal-infant HIV transmission; and

(5) methods to prevent the transmission of the HIV virus and syphilis.

(2) Amend proposed Section 81.090(j), Health and Safety Code (as it was lettered in the House Committee Report), relettered as appropriate, to read as follows:

( ) A physician or other person may not conduct a standard test for HIV infection under Subsection (a)(2)(B) or (c)(2)(B) if the woman objects.

Amendment No. 1 was adopted without objection.

**HB 1345**, as amended, was passed.

### **HB 3179 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 3179**, A bill to be entitled An Act relating to the creation, administration, powers, duties, operation, and financing of the Clear Creek Watershed Regional Flood Control District, granting the power of eminent domain, authorizing the issuance of bonds, providing for the levy, assessment, and collection of ad valorem taxes, and providing for a civil penalty.

A record vote was requested.

The bill was read third time and was passed by (Record 281): 143 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culbertson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moreno;

Mowery; Munoz; Naishtat; Nixon; Oakley; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wolens; Woolley; Yarbrough; Yost; Zbraneck.

Present, not voting — Mr. Speaker(C).

Absent — Dukes; Gallego; Moffat; Ogden; Swinford; Wohlgemuth.

### STATEMENT OF VOTE

When Record No. 281 was taken, I was with constituents outside the House chamber. I would have voted yes.

Gallego

### HB 2197 ON THIRD READING

The speaker laid before the house, on its third reading and final passage,

**HB 2197**, A bill to be entitled An Act relating to the payment in installments of ad valorem taxes on certain property located in a disaster area.

A record vote was requested.

The bill was read third time and was passed by (Record 282): 139 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culbertson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Woolley; Yarbrough; Zbraneck.

Present, not voting — Mr. Speaker(C).

Absent — Dukes; Gallego; Hartnett; Munoz; Ogden; Oliveira; Uher; Wohlgemuth; Wolens; Yost.

### STATEMENT OF VOTE

When Record No. 282 was taken, I was with constituents outside the House chamber. I would have voted yes.

Gallego

**HB 2176 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 2176**, A bill to be entitled An Act relating to the award of highway improvement contracts.

A record vote was requested.

The bill was read third time and was passed by (Record 283): 138 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Cuellar, H.; Cuellar, R.; Culbertson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Duncan; Dutton; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moreno; Munoz; Naishtat; Nixon; Oakley; Oliveira; Park; Patterson; Pickett; Pitts; Place; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wolens; Woolley; Yarbrough; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent — Craddick; Dukes; Edwards; Hamric; Hochberg; Moffat; Mowery; Ogden; Price; Wohlgemuth; Yost.

**HB 1900 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1900**, A bill to be entitled An Act relating to routine purchases and contracts made by a port commission.

A record vote was requested.

The bill was read third time and was passed by (Record 284): 124 Yeas, 9 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Danburg; Davila; Davis; De La Garza; Dear; Denny; Driver; Dutton; Edwards; Ehrhardt; Eiland; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hill; Hirschi; Hochberg; Holzheuser; Howard; Hunter, B.; Hunter, T.; Janek; Johnson; Jones, D.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Maxey;

McCall; McCoulskey; McDonald; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Park; Patterson; Pickett; Pitts; Place; Puente; Rabuck; Ramsay; Rangel; Raymond; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Yarbrough; Zbranek.

Nays — Corte; Culberson; Elkins; Hilderbran; Horn; Madden; Reyna; Smithee; Woolley.

Present, not voting — Mr. Speaker(C).

Absent — Delisi; Dukes; Duncan; Hamric; Hudson; Jackson; Jones, J.; Marchant; Moffat; Ogden; Oliveira; Price; Siebert; Tillery; Wolens; Yost.

### **HB 2151 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 2151**, A bill to be entitled An Act relating to the issuance of titles to certain motor vehicles.

The bill was read third time and was passed.

### **HB 2599 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 2599**, A bill to be entitled An Act relating to the licensing and regulation of certain persons dealing in salvage vehicles and parts; providing criminal penalties.

The bill was read third time and was passed.

### **HB 2443 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 2443**, A bill to be entitled An Act relating to the liability of contractors under a contract to improve real property.

The bill was read third time.

### **Amendment No. 1**

Representative Jackson offered the following amendment to the bill:

Amend **HB 2443** on third reading as follows:

(1) Strike proposed Section 145.001, Property Code, and substitute the following:

Sec. 145.001. PARTY LIABLE ONLY FOR ITS OWN NEGLIGENCE. Each party to the contract to improve real property is liable only for damages arising from its own actionable negligence.

Sec. 145.002. TRANSFER OF LIABILITY PROHIBITED. A party to a contract to improve real property may not transfer that party's liability for damages arising from its own negligence by any means, including through a contract.

(2) Renumber existing proposed Section 145.002, Property Code, as 145.003.

Amendment No. 1 was adopted without objection.

**HB 2443**, as amended, was passed.

### **HB 809 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 809**, A bill to be entitled An Act relating to the purposes for which funds received by local crime stoppers programs may be used.

The bill was read third time and was passed.

### **HB 740 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 740**, A bill to be entitled An Act relating to the sale by certain home-rule municipalities of land sold pursuant to foreclosure of an ad valorem tax lien.

A record vote was requested.

The bill was read third time and was passed by (Record 285): 141 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culbertson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Staples; Stiles; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent — Chisum; Greenberg; Hudson; Moffat; Munoz; Ogden; Solomons; Swinford.

### **STATEMENT OF VOTE**

When Record No. 285 was taken, I was in the house but away from my desk. I would have voted yes.

Solomons

### **HB 741 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 741**, A bill to be entitled An Act relating to the liability of certain municipalities for a claim arising from land acquired at a sale following the foreclosure of a lien held by the municipality.

A record vote was requested.

The bill was read third time and was passed by (Record 286): 141 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Clemons; Coleman; Combs; Conley; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Grusendorf; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent — Chisum; Cook; Delisi; Greenberg; Gutierrez; Munoz; Ogden; Swinford.

### STATEMENT OF VOTE

When Record No. 286 was taken, I was in the house but away from my desk. I would have voted yes.

Cook

### HB 635 ON THIRD READING

The speaker laid before the house, on its third reading and final passage,

**HB 635**, A bill to be entitled An Act relating to territory contained within the Jefferson County Water Control and Improvement District No. 10.

A record vote was requested.

The bill was read third time and was passed by (Record 287): 143 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell;

Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent — Howard; Hudson; Longoria; Moffat; Munoz; Ogden.

### HB 2839 ON THIRD READING

The speaker laid before the house, on its third reading and final passage,

**HB 2839**, A bill to be entitled An Act relating to the borrowing powers of drainage districts.

A record vote was requested.

The bill was read third time and was passed by (Record 288): 148 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culbertson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker(C).

Absent — Ogden.

### HB 3211 ON THIRD READING

The speaker laid before the house, on its third reading and final passage,



**HB 3211**, A bill to be entitled An Act relating to the qualifications and terms of the port commissioners of the Port of Corpus Christi Authority of Nueces County.

A record vote was requested.

The bill was read third time and was passed by (Record 289): 142 Yeas, 1 Nay, 1 Present, not voting.

Yeas — Alexander; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; Dear; Delisi; Denny; Driver; Dukes; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moreno; Mowery; Naishtat; Nixon; Oakley; Oliveira; Park; Patterson; Pickett; Pitts; Place; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Nay — De La Garza.

Present, not voting — Mr. Speaker(C).

Absent — Allen; Hudson; Moffat; Munoz; Ogden; Price.

### STATEMENTS OF VOTE

I was shown voting no on Record No. 289. I intended to vote yes.

De La Garza

When Record No. 289 was taken, I was in the house but away from my desk. I would have voted yes.

Allen

### HB 2268 ON THIRD READING

The speaker laid before the house, on its third reading and final passage,

**HB 2268**, A bill to be entitled An Act relating to the adoption of the Texas Uniform Transfers to Minors Act.

The bill was read third time and was passed.

### HB 2119 ON THIRD READING

The speaker laid before the house, on its third reading and final passage,

**HB 2119**, A bill to be entitled An Act relating to intermediate sanction facilities and the disposition of delinquent children.

The bill was read third time and was passed.

**MESSAGE FROM THE SENATE**

Austin, Texas, May 3, 1995

The Honorable Speaker of the House of Representatives  
House Chamber

The Honorable  
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has passed the following:

**HB 462** by Alvarado, Raymond, et al. (Sponsor-Whitmire), relating to the application of the sales and use tax to food products sold to prison inmates.

I am directed by the Senate to inform the House that the Senate has concurred in House Amendments to the following: **SCR 16** by Viva Voce Vote; **SB 401** by Viva Voce Vote; **SB 279** by 31 Yeas, 0 Nays; **SB 403** by 31 Yeas, 0 Nays; **SB 897** by 31 Yeas, 0 Nays.

I am directed by the Senate to inform the House that the Senate has refused to concur in House Amendments to **SB 60** and requests the appointment of a Conference Committee to adjust the differences between the two Houses.

The following have been appointed on the part of the Senate: Senator Patterson, chair, Senator Brown, Senator Armbrister, Senator Shapiro, and Senator West.

I am directed by the Senate to inform the House that the Senate has adopted the Conference Committee Report on the following: **SB 360** by Viva Voce Vote.

Respectfully,  
Betty King  
Secretary of the Senate

**HB 546 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 546**, A bill to be entitled An Act relating to the exclusion of unserved property from certain water conservation and reclamation districts.

The bill was read third time and was passed.

**HB 1537 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1537**, A bill to be entitled An Act relating to the calculation of the effective tax rate for taxing units.

The bill was read third time.

**Amendment No. 1**

Representative Craddick offered the following amendment to the bill:

Amend **HB 1537** on third reading by striking Sections 1 and 2 and substituting the following:

SECTION 1. Section 26.012(11), Tax Code, is amended to read as follows:

(11) "Last year's debt levy" means the total of:

(A) the amount of taxes that would be generated by multiplying the total taxable value of property on the appraisal roll for the preceding year, including all appraisal roll supplements and corrections, other than corrections made pursuant to Section 25.25(d) of this code, as of the date of calculation, by the debt rate adopted by the governing body in the preceding year under Section 26.05(a)(1) [26.05(b)(1)] of this code; and

(B) the amount of debt taxes refunded by the taxing unit in the preceding year for tax years before that year.

SECTION 2. Section 26.012(13), Tax Code, is amended to read as follows:

(13) "Last year's levy" means the total of:

(A) the amount of taxes that would be generated by multiplying the total tax rate adopted by the governing body in the preceding year by the total taxable value of property on the appraisal roll for the preceding year, including all appraisal roll supplements and corrections other than corrections made pursuant to Section 25.25(d) of this code, as of the date of the calculation, except that last year's taxable value for a school district excludes the total value of homesteads that qualified for a tax limitation as provided by Section 11.26 of this code; and

(B) the amount of taxes refunded by the taxing unit in the preceding year for tax years before that year.

Amendment No. 1 was adopted without objection.

## **Amendment No. 2**

Representative Craddick offered the following amendment to the bill:

Amend **HB 1537** on third reading by adding a new section, appropriately numbered to read as follows:

SECTION . Amend Section 26.08, Tax Code, adding a new Subsection (i) to read as follows:

(i) For purposes of this section, increases in taxable values and tax levies occurring within a reinvestment zone under the provisions of Chapter 311, Tax Code (Tax Increment Financing Act), in which the district is a participant, shall be eliminated from the calculation of the tax rate adopted by the governing body of the school district."

Amendment No. 2 was adopted without objection.

**HB 1537**, as amended, was passed.

## **HB 418 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 418**, A bill to be entitled An Act relating to protection of the family.

The bill was read third time and was passed.

## **HB 336 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 336**, A bill to be entitled An Act relating to proceedings to prove certain informal marriages.

The bill was read third time and was passed.

**HB 843 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 843**, A bill to be entitled An Act relating to the regulation of petroleum storage tanks.

The bill was read third time and was passed.

**HB 3032 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 3032**, A bill to be entitled An Act relating to the regulation of petroleum storage tanks.

The bill was read third time and was passed.

**HB 2587 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 2587**, A bill to be entitled An Act relating to the operation of certain aboveground and underground storage tanks and the regulation of underground storage tank installers; providing penalties.

The bill was read third time and was passed.

**HB 1785 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1785**, A bill to be entitled An Act relating to certain Parks and Wildlife Department admissions fees, license requirements, and exemptions.

The bill was read third time and was passed. (Clemons, Corte, Crabb, Craddick, Horn, Howard, B. Hunter, Johnson, Kubiak, Marchant, Patterson, Rabuck, Ramsay, Reyna, Swinford, Talton, Telford, and Zbranek recorded voting no)

**HB 2216 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 2216**, A bill to be entitled An Act relating to the issuance of licenses and stamps by the Parks and Wildlife Department; providing penalties.

A record vote was requested.

The bill was read third time and was passed by (Record 290): 136 Yeas, 6 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Conley; Cook; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Denny; Driver; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett;

Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Nays — Corte; Delisi; Howard; King; Rabuck; Telford.

Present, not voting — Mr. Speaker(C).

Absent — Alonzo; Combs; Dukes; Gallego; Marchant; Ogden; Sadler.

### STATEMENTS OF VOTE

I was shown voting no on Record No. 290. I intended to vote yes.

Howard

I was shown voting yes on Record No. 290. I intended to vote no.

B. Hunter

I was shown voting yes on Record No. 290. I intended to vote no.

Ramsay

When Record No. 290 was taken, I was out of the Chamber meeting with constituents. I would have voted yes.

Gallego

When Record No. 290 was taken, I was in the house but away from my desk. I would have voted no.

Marchant

### HB 253 ON THIRD READING

The speaker laid before the house, on its third reading and final passage,

**HB 253**, A bill to be entitled An Act relating to requiring that parole officers receive information on new parolees within 14 days after release.

The bill was read third time and was passed.

### HB 2459 ON THIRD READING

The speaker laid before the house, on its third reading and final passage,

**HB 2459**, A bill to be entitled An Act relating to public funds investment.

The bill was read third time.

### Amendment No. 1

Representative Marchant offered the following amendment to the bill:

Amend **HB 2459** on third reading by amending Section 2256.017, page 21 to read as follows:

Sec. 2256.017 [~~2256.016~~]. SUBCHAPTER NOT APPLICABLE TO RETIREMENT SYSTEMS AND CERTAIN STATE AGENCIES. This subchapter does not apply to a public retirement system as defined by Section 802.001, to state funds invested as authorized by Section 404.024, or to an institution of higher education having total endowments of at least \$95 million in book value as of May 1, 1995.

Amendment No. 1 was adopted without objection.

**HB 2459**, as amended, was passed.

### **HB 796 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 796**, A bill to be entitled An Act relating to the regulation of air conditioning and refrigeration contractors; providing penalties.

The bill was read third time and was passed.

### **HB 2390 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 2390**, A bill to be entitled An Act relating to the abolishment of the Texas High-Speed Rail Authority.

The bill was read third time and was passed.

### **HB 2929 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 2929**, A bill to be entitled An Act relating to the safe operation of bicycles on roadways and to the consequences of certain offenses involving the operation of bicycles on roadways; creating an offense.

A record vote was requested.

The bill was read third time and was passed by (Record 291): 90 Yeas, 51 Nays, 1 Present, not voting.

Yeas — Alexander; Alvarado; Averitt; Berlanga; Black; Bosse; Chisum; Clemons; Coleman; Combs; Conley; Cook; Counts; Craddick; Cuellar, H.; Cuellar, R.; Danburg; Davis; De La Garza; Dear; Duncan; Dutton; Edwards; Eiland; Farrar; Finnell; Gallego; Giddings; Glaze; Gray; Gutierrez; Hawley; Hernandez; Hilbert; Holzheuser; Hudson; Hunter, T.; Johnson; Jones, D.; Jones, J.; Junell; Kamel; Lewis, G.; Lewis, R.; Longoria; Luna; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Oakley; Ogden; Oliveira; Patterson; Pickett; Place; Price; Puente; Rangel; Raymond; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Solis; Solomons; Stiles; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; Williamson; Willis; Wilson; Wolens; Woolley; Yost; Zbranek.

Nays — Allen; Bailey; Brady; Brimer; Carona; Carter; Corte; Crabb; Culberson; Delisi; Denny; Driver; Ehrhardt; Goodman; Goolsby; Grusendorf;

Haggerty; Hamric; Harris; Hartnett; Heflin; Hilderbran; Hill; Hirschi; Hochberg; Horn; Howard; Hunter, B.; Jackson; Janek; King; Krusee; Kubiak; Kuempel; Madden; Maxey; McCall; Naishtat; Nixon; Park; Pitts; Rabuck; Ramsay; Reyna; Smithee; Staples; Swinford; Talton; West; Wohlgemuth; Yarbrough.

Present, not voting — Mr. Speaker(C).

Absent — Alonzo; Davila; Dukes; Elkins; Greenberg; Hightower; Marchant; Telford.

### **HB 1495 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1495**, A bill to be entitled An Act relating to the right of certain persons to obtain information concerning a hearing for court-ordered mental health services.

The bill was read third time and was passed.

### **HB 1536 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1536**, A bill to be entitled An Act relating to the beneficial use of material dredged from the Gulf Intracoastal Waterway.

The bill was read third time and was passed.

### **HB 2525 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 2525**, A bill to be entitled An Act relating to the authority of certain hospital authorities to issue short-term obligations.

A record vote was requested.

The bill was read third time and was passed by (Record 292): 142 Yeas, 1 Nay, 1 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Duncan; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hawley; Heflin; Hernandez; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Madden; Marchant; Maxey; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbrank.

Nay — Hartnett.

Present, not voting — Mr. Speaker(C).

Absent — Coleman; Dukes; Hightower; Luna; McCall; Smithee.

### STATEMENT OF VOTE

I was shown voting no on Record No. 292. I intended to vote yes.

Hartnett

### HB 2468 ON THIRD READING

The speaker laid before the house, on its third reading and final passage,

**HB 2468**, A bill to be entitled An Act relating to the creation of an advisory committee for the Department of Protective and Regulatory Services on programs for promoting the adoption of and provision of services to adoptable African-American children.

The bill was read third time and was passed. (Heflin recorded voting no)

### HB 2805 ON THIRD READING

The speaker laid before the house, on its third reading and final passage,

**HB 2805**, A bill to be entitled An Act relating to the appointment of a tenant member to the governing body of a municipal housing authority.

The bill was read third time.

### Amendment No. 1

Representative Naishtat offered the following amendment to the bill:

Amend **HB 2805** on third reading by striking Section 1 and substituting the following:

SECTION 1. Sections 392.0331(a) and (f), Local Government Code, are amended to read as follows:

(a) This section applies only to:

(1) a municipality [~~with a population of 75,000 or more~~]; or

(2) a county that has a county housing authority or is a member of regional housing authority and the total number of units in the authority is more than 750.

(f) A commissioner appointed under this section may not be reappointed to consecutive terms.

Amendment No. 1 was adopted without objection.

**HB 2805**, as amended, was passed.

### HB 2365 ON THIRD READING

The speaker laid before the house, on its third reading and final passage,

**HB 2365**, A bill to entitled An Act relating to county licenses for business establishments on public beaches.

The bill was read third time and was passed.



**HB 1419 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1419**, A bill to be entitled An Act relating to the issuance of a food and beverage certificate to certain holders of alcoholic beverage permits.

The bill was read third time.

**Amendment No. 1**

Representative Madden offered the following amendment to the bill:

Amend, on third reading, **HB 1419** as follows:

(1) In added Section 109.57(e), Alcoholic Beverage Code, as added by the Wolens Amendment, insert the following after "250,000" and before "may": "or a municipality located in a county with a population of 250,000 or more and that is adjacent to a county with a population of 1.2 million or more"

Amendment No. 1 was adopted without objection.

**HB 1419**, as amended, was passed.

**HB 1275 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 1275**, A bill to be entitled An Act relating to apprehension specialists of the Texas Youth Commission as peace officers.

The bill was read third time and was passed.

**HB 2065 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 2065**, A bill to be entitled An Act relating to enterprise zones.

The bill was read third time.

**Amendment No. 1**

Representative Pickett offered the following amendment to the bill:

Amend **CSHB 2065** on third reading by adding the following appropriately numbered section and renumbering subsequent sections appropriately:

SECTION \_\_\_\_\_. Section 481.155, Government Code, is amended by adding Subsection (h) to read as follows:

(h) In awarding a grant under this section, the executive director shall give priority to a project that is located in an enterprise zone as defined by Section 2303.003.

Amendment No. 1 was adopted without objection.

**HB 2065**, as amended, was passed.

**HB 129 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 129**, A bill to be entitled An Act relating to medical savings accounts; providing a penalty.

The bill was read third time.

**Amendment No. 1**

On behalf of Representative Yarbrough, Representative Shields offered the following amendment to the bill:

Amend **CSHB 129** as follows:

- (1) On page 3 insert between lines 20 and 21 the following:
- (g) An account under this Act must be a separate account that is federally-insured, or administered by a fidelity-bonded administrator.
- (2) On page 4, line 18, strike "(a)(8)" and substitute "(a)(6)".

Amendment No. 1 was adopted without objection.

**HB 129**, as amended, was passed.

**HB 594 ON THIRD READING**

The speaker laid before the house, on its third reading and final passage,

**HB 594**, A bill to be entitled An Act relating to the punishment and sentencing of a defendant convicted of a repeat offense of sexual assault.

The bill was read third time.

**Amendment No. 1**

Representative Danburg offered the following amendment to the bill:

Amend **HB 594** on 3rd reading by striking the Danburg 2nd reading amendment and substituting the following:

Amend **HB 594** by adding an appropriately numbered SECTION to read as follows and by renumbering existing SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 5(a), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(a) Except as provided by Subsection (d) of this section, when in the judge's opinion the best interest of society and the defendant will be served, the judge may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on community supervision. The judge shall inform the defendant orally or in writing of the possible consequences under Subsection (b) of this section of a violation of community supervision. If the information is provided orally, the judge must record and maintain the judge's statement to the defendant. In a felony case, the period of community supervision may not exceed 10 years. For a defendant charged with a felony under Section 21.11, 22.011, or 22.021, Penal Code, notwithstanding Section 3(b) of this article, the period of community supervision may not be less than five years. In a misdemeanor case, the period of community supervision may not exceed two years. A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) of this article. The judge may impose a fine applicable to the offense and require any reasonable conditions of community supervision, including mental health treatment under Section 11(d) of this article, that a judge could impose on a defendant placed on community supervision for a conviction that was probated and suspended, including confinement. However, upon written motion of the defendant requesting final

adjudication filed within 30 days after entering such plea and the deferment of adjudication, the judge shall proceed to final adjudication as in all other cases.

Amendment No. 1 was adopted without objection.

**HB 594**, as amended, was passed.

### **HB 1863 - WITH SENATE AMENDMENTS**

Representative Hilderbran called up with senate amendments for consideration at this time,

**HB 1863**, A bill to be entitled An Act relating to eligibility for and the provision of services and programs for needy people, including children; to assistance in becoming or remaining self-dependent; and to the responsibility of parents and others to assist needy people, including children, in becoming or remaining self-dependent; providing penalties.

Representative Hilderbran moved that the house not concur in the senate amendments and that a conference committee be requested to adjust the differences between the two houses on the bill.

The motion prevailed without objection.

### **HB 1863 - APPOINTMENT OF CONFERENCE COMMITTEE**

The speaker announced the appointment of the following conference committee, on the part of the house, on **HB 1863**: Representatives Hilderbran, chair, Maxey, Oliveira, Thompson, and Denny.

### **RULES SUSPENDED**

Representative Danburg moved to suspend the 5-day posting rule to allow the Committee on Elections to consider **HCR 185**.

The motion prevailed without objection.

Representative Telford moved to suspend the 5-day posting rule to allow the Committee on Pensions and Investments to consider **HB 1270** and **HB 1793**.

The motion prevailed without objection.

Representative Alexander moved to suspend the 5-day posting rule to allow the Committee on Transportation to consider **SCR 78**.

The motion prevailed without objection.

### **COMMITTEE MEETING ANNOUNCEMENTS**

The following committee meetings were announced:

Pensions and Investments, on recess today, Desk 54, to consider **HB 1270** and **HB 1793**.

State, Federal, and International Relations, on recess today, Desk 47, to consider **HCR 186**.

Judicial Affairs, on recess today, Desk 67.

Natural Resources, on recess today, Desk 9, to consider **HB 2160**, **HB 3096**, **HB 3230**, **HB 3232**, **HB 3234**, **SB 626**, and **SB 942**.

Public Health, on recess today, speakers committee room.

Redistricting, on recess today, Desk 36.

Land and Resource Management, on recess today, Desk 1, to consider **HB 3082**.

Higher Education, on recess today, Desk 118, to consider **HB 328, HB 628, HB 938, HB 1592, HB 2247, HB 2342, HB 2531, HB 2683, HB 2747, HB 3119, and SB 397**.

Rules and Resolutions, on recess today, Desk 133, to consider the calendar.

Licensing and Administrative Procedures, on recess today, Desk 66.

Energy Resources, on recess today, Desk 18, to consider previously posted bills.

Ways and Means, on recess today, Desk 70.

Appropriations, on recess today, back hall, to consider **HB 3049**.

### **RECESS**

Representative Uher moved that the house recess until 1:50 p.m.

The motion prevailed without objection.

The house accordingly, at 12:22 p.m., recessed until 1:50 p.m.

### **AFTERNOON SESSION**

The house met at 1:50 p.m. and was called to order by the speaker.

(Pickett in the chair)

(Speaker in the chair)

### **ADDRESS BY REPRESENTATIVE WILSON ON A MATTER OF PERSONAL PRIVILEGE**

The speaker recognized Representative Wilson, who addressed the house on a matter of personal privilege, speaking as follows:

Members, I'm not going to take up a lot of your time, but I am going to ask you to bear with me for at least a few minutes as I discuss an issue with you that is of deep concern to me and to a number of those who are here in both the house and senate and across the state.

There's a Texan by the name of George Green. He was born in Abilene, Texas, Bob Hunter's, John Cook's, and David Count's territory. He attended high school in El Paso. He was an honor graduate in the first graduating class at Coronado High School. He helped write the school song and even helped select the school mascot. Then he attended the University of Texas School of Architecture.

In 1983, Mr. Green began work for the Department of Human Services as its only in-house architect. His duties were to supervise DHS renovation projects and he was designated the department safety officer.

He reported to his superiors what he believed to be a pattern of fraud and corruption in the performance of construction projects at DHS. Some of those

were the procurement officers accepting gifts from private companies that leased building space at DHS. A contractor was offering discount jewelry to DHS employees while the fire control systems failed to meet DHS specifications. And he found contract and lease fraud evidence.

There was no response from his superiors. He then informed the superiors that he would take the matters to authorities outside DHS. This was in August of 1989.

In September, the DHS began to investigate him. His long distance calls were investigated for over a two and a half year period—over 8,000 long distance calls. They finally revealed after an investigation that one was an alleged improper phone call that he made to his father, cost—13 cents. DHS referred the matter to the district attorney.

After there was no impropriety found, DHS initiated another investigation of Mr. Green in late October of 1989. It focused on his sick leave. As part of their investigation, it included covert surveillance and also included an audit where they used five unmarked DHS cars to follow Mr. Green for a long period of time—this while there were thousands of pending child abuse cases on the books—but they pulled these unmarked cars off those cases to follow Mr. Green.

He was fired in 1989. He filed a suit March 9th of 1990. The suit was heard in August and September of 1991. A trial court rendered judgment on a verdict for Mr. Green. The state owes Mr. Green the verdict amount—some 19 odd million dollars. It's accruing interest at the tune of about 5,000 dollars a day.

If there is any theme for our deliberations this session, it seems we would like to include the reference to responsibility. We've come before the good people of this state and said individuals must become more responsible for their actions. We've mandated parental responsibility. Absent fathers are now compelled to "fess up" for their children. Recalcitrant parents must pay child support or risk being thrown in jail or having their occupational licenses revoked. All in the name of responsibility. Young mothers on welfare are now being required to enter into and sign a responsibility contract with the state before we consent to provide financial assistance to their young children.

In the tort reform package we're going to take up later, we're going to consider today, under the subject of joint and several liability, if you're 50 percent responsible for the act, you're totally responsible and won't recover one thin dime.

We're asking everybody else in this state to be responsible, except ourselves.

I see a dangerous trend developing in our government which we are a part of, and that is for us to hide behind sovereign immunity when it comes to owing individuals in this state some kind of justice. This man played by the rules. He went to court. Went before a jury of his peers. Won. Was granted a judgment. Has come before the state, this government, his government, to honor the very laws that we sit here and write every day and vote on every day. He's asking us to just honor the laws we swore to uphold.

We stood here on the second Tuesday in January of this year, raised our hands and upheld all the laws of the constitution and the laws of this state. He's asking us to honor that agreement. We've yet to do it. I understand that

the Appropriations Committee met on the noon recess and decided they were going to offer him his actual damages plus interest—comes to about 5.5 million dollars—somewhere in there. The court awarded him punitive damages—10 million dollars. I guess we just have kind of forgotten about that.

We are the great government. We don't have to listen to the courts, but yet we want zero tolerance in our schools for little bitty kids, for six year olds and seven year olds. If you make a whimper in the classrooms, we're going to kick you out for the day or for the week. If you have a fight or cause a problem we're going to get rid of you because those little children should be personally responsible.

What about us? What kind of message does that send. We want them to be personally responsible, but we want to abdicate our responsibility, simply because we are allowed the opportunity not to live up to it and there is no one to spank us on the hands.

Corruption in government is a crime against the taxpayer. Mr. Green did exactly as the law required him to do. He saw evidence of corruption. He reported it. He has suffered for it. He now lives in a shack. His friends help him get by from day to day. That's the reward that he was given.

This government has no existence apart from its people. If we forget that, we miss our whole responsibility. It's dishonorable for us not to pay Mr. Green what he is owed. It should tear at the heart strings of every member of this house and of the senate not to live up to that responsibility. Otherwise—when we leave here, rather than go home to an interim, and we speak to the Kiwanis clubs and the civic groups, and we venture to the elementary schools and we say we should be responsible citizens, grow up in our great society, be a part of it, obey the laws and you'll do well—we can't do that with a straight face.

I implore you, members, whatever part you may have as individuals or as a group on this issue, we owe it to this man to live up to our word and to the laws of this state. We should give this former eagle scout and now boy scout troop leader the justice he deserves.

Thank you very much members.

#### **REMARKS ORDERED PRINTED**

Representative Thompson moved to print remarks by Representative Wilson.

The motion prevailed without objection.

#### **SB 365 ON SECOND READING (Gray - House Sponsor)**

The speaker laid before the house, on its second reading and passage to third reading, the complete committee substitute for **SB 365**.

**CSSB 365**, A bill to be entitled An Act relating to the continuation and functions of the Texas Historical Commission and to the abolition of the Antiquities Committee and the transfer of the committee's functions to the commission.

**CSSB 365** was read second time.

(Speaker pro tempore in the chair)

### **Amendment No. 1**

Representative Davis offered the following amendment to **CSSB 365**:

Amend **CSSB 365** as follows:

(1) On page 10, strike line 17 and substitute "Subsections (r) and (s) to read as follows:".

(2) On page 12, between lines 3 and 4, insert the following:

(s) The commission may promote the appreciation of historic sites, structures, or objects in the state through a program designed to develop tourism in the state.

Amendment No. 1 was adopted without objection.

### **Amendment No. 2**

Representative Davis offered the following amendment to **CSSB 365**:

Amend **CSSB 365** by adding an appropriately numbered section to read as follows:

SECTION \_\_\_\_\_. (a) The Texas Historical Commission and the Parks and Wildlife commission shall conduct a joint study of the possible transfer of management and control of various historical sites currently under the management and control of the Texas Parks and Wildlife Department.

(b) The study must consider, as to each site, the benefits and detriments of the transfer, must include professional assessments by staff and any consultants as well as assessments by the general public and the communities surrounding the applicable site, and must consider funding sources alternative to the sources currently dedicated by state law to the acquisition, operation, and maintenance of state parks. If the two agencies agree that the transfer of one or more sites is to be recommended, the respective commissions shall develop a schedule for the orderly transfer of the sites, with the final transfer occurring not later than September 1, 2001.

(c) The Texas Historical Commission and the Parks and Wildlife Commission shall report the results of the study and their recommendations, including any proposed transfer schedule, to the 75th Legislature not later than February 1, 1997.

Amendment No. 2 was adopted without objection.

### **Amendment No. 3**

Representative Kubiak offered the following amendment to **CSSB 365**:

Amend **CSSB 365** by inserting the following section to the bill, appropriately numbered, and renumbering the remaining sections of the bill appropriately:

SECTION \_\_\_\_\_. Chapter 442, Government Code, is amended by adding Section 442.0085 to read as follows:

Sec. 442.0085. MILITARY SITES PROGRAM. (a) The commission shall identify sites in and outside this state that are historically significant to this state because of:

(1) military action or service at the sites; or

(2) other significant events of a military nature at the sites that shaped the history of this state.

(b) In carrying out its duties under Subsection (a), the commission shall assist other governmental entities, including other states, institutions, organizations, and other entities in identifying military sites outside this state where Texans served with distinction.

(c) The commission may designate or encourage the designation of sites identified under Subsections (a) and (b) through existing history programs, including:

(1) local community landmark programs;

(2) the state historical marker program under Section 442.006;

(3) the National Register of Historic Places;

(4) the National Historic Landmarks program;

(5) the World Heritage List; and

(6) other appropriate programs.

(d) The commission may provide information regarding the significance of the sites designated under this section using:

(1) historical markers and monuments;

(2) publications and films; and

(3) other appropriate media.

(e) The commission may seek assistance from other state and local governmental entities in carrying out the commission's duties under this section.

(f) The commission may seek and accept gifts, grants, and donations from public or private sources, including seeking available federal funds, to accomplish the purposes of this section.

Amendment No. 3 was adopted without objection.

#### **Amendment No. 4**

Representative Cook offered the following amendment to **CSSB 365**:

Amend **CSSB 365** by adding an appropriately numbered section to the bill to read as follows and renumbering the remaining sections of the bill appropriately:

SECTION \_\_\_\_\_. Section 191.092, Natural Resources Code, is amended by adding new Subsections (c), (d), and (e) and relettering existing Subsections (c), (d), and (e) to read as follows:

(c) An individual or a private group that desires to nominate a building or site owned by a political subdivision as a state archeological landmark must give notice of the nomination at the individual's or group's own expense in a newspaper of general circulation published in the city, town, or county in which the building or site is located. If no newspaper of general circulation is published in the city, town, or county, the notice must be published in a newspaper of general circulation published in an adjoining or neighboring county that is circulated in the county of the applicant's residence. The notice must:

(1) be printed in 12-point boldfaced type;

(2) include the exact location of the building or site; and



(3) include the name of the group or individual nominating the building or site.

(d) An original copy of the notice and an affidavit of publication signed by the newspaper's publisher must be submitted to the commission with the application for nomination.

(e) The commission may not consider for designation as a state archeological landmark a building or site owned by a political subdivision unless the notice and affidavit required by Subsection (d) are attached to the application.

(f) Before the committee may designate a structure or building as a state archeological landmark, the structure or building must be listed on the National Register of Historic Places.

(g) [(+)] The committee shall adopt rules establishing criteria for the designation of a structure or building as a state archeological landmark.

(h) [(e)] The committee shall consider any and all fiscal impact on local political subdivisions before any structure or building owned by a local political subdivision may be designated as a state archeological landmark.

Amendment No. 4 was adopted without objection.

**CSSB 365**, as amended, was passed to third reading.

**SB 368 ON SECOND READING**  
**(Black - House Sponsor)**

The chair laid before the house, on its second reading and passage to third reading,

**SB 368**, A bill to be entitled An Act relating to the continuation and functions of the Equine Research Account Advisory Committee.

The bill was read second time and was passed to third reading.

**SB 409 ON SECOND READING**  
**(Junell - House Sponsor)**

The chair laid before the house, on its second reading and passage to third reading, the complete committee substitute for **SB 409**.

**CSSB 409**, A bill to be entitled An Act relating to the accounting treatment of premium and discount associated with the purchase of certain securities for the permanent school fund.

**CSSB 409** was read second time and was passed to third reading.

**SB 410 ON SECOND READING**  
**(Junell - House Sponsor)**

The chair laid before the house, on its second reading and passage to third reading,

**SB 410**, A bill to be entitled An Act relating to the delay of certain payments or transfers from the general revenue fund.

The bill was read second time and was passed to third reading.

**RULES SUSPENDED**

Representative Combs moved to suspend all necessary rules to take up third reading senate bills (**SB 548**, **SB 1060**, **SB 529**, **SB 688**, **SB 1196**), postponed business (**HB 2877**, **HB 2878**, **HB 2924**, **HB 1905**, **HB 1111**), and the resolutions calendar (**HCR 4**) before consideration of **SB 1**.

The motion prevailed without objection.

**SB 548 ON THIRD READING**  
**(S. Turner - House Sponsor)**

The chair laid before the house, on its third reading and final passage,

**SB 548**, A bill to be entitled An Act relating to the regulation of podiatry.

The bill was read third time and was passed.

**SB 1060 ON THIRD READING**  
**(R. Lewis - House Sponsor)**

The chair laid before the house, on its third reading and final passage,

**SB 1060**, A bill to be entitled An Act relating to the assessment of certain fees or costs by a justice, municipal, or county court.

The bill was read third time and was passed.

**SB 529 ON THIRD READING**  
**(Siebert - House Sponsor)**

The chair laid before the house, on its third reading and final passage,

**SB 529**, A bill to be entitled An Act relating to remedies for unauthorized use of certain Olympic symbols.

The bill was read third time and was passed.

**SB 688 ON THIRD READING**  
**(Siebert - House Sponsor)**

The chair laid before the house, on its third reading and final passage,

**SB 688**, A bill to be entitled An Act relating to the use of reclaimed asphalt pavement.

A record vote was requested.

The bill was read third time and was passed by (Record 293): 145 Yeas, 0 Nays, 2 Present, not voting.

Yeas — Alexander; Allen; Alonzo; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Conley; Cook; Corte; Counts; Crabb; Craddick; Cuellar, H.; Cuellar, R.; Culbertson; Danburg; Davila; Davis; De La Garza; Dear; Delisi; Denny; Driver; Dukes; Dutton; Edwards; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Giddings; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard;

Hudson; Hunter, B.; Hunter, T.; Jackson; Janek; Johnson; Jones, D.; Jones, J.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Longoria; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Thompson; Tillery; Torres; Turner, B.; Turner, S.; Van de Putte; Walker; West; Williamson; Willis; Wilson; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbranek.

Present, not voting — Mr. Speaker; Uher(C).

Absent — Duncan; Ogden; Seidlits.

**SB 1196 ON THIRD READING**  
**(Patterson - House Sponsor)**

The chair laid before the house, on its third reading and final passage,

**SB 1196**, A bill to be entitled An Act relating to the boll weevil eradication program.

The bill was read third time and was passed.

**SB 1125 ON SECOND READING**  
**(Holzheuser - House Sponsor)**

The chair laid before the house, in lieu of **CSHB 2877**, on its second reading and passage to third reading,

**SB 1125**, A bill to be entitled An Act relating to the renewal, amendment, or modification of certain emissions permits.

The bill was read second time.

**Amendment No. 1 (Committee Amendment No. 1)**

On behalf of Representative Howard, Representative Holzheuser offered the following committee amendment to the bill:

Amend **SB 1125** as follows:

(1) In SECTION 2 of the bill, in Section 382.0561, strike proposed subsection (e), Health and Safety Code, (page 2, line 15) and substitute new subsection (e) to read as follows:

(e) Notwithstanding other provision of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the board determines that the application involves a facility for which the applicant's compliance history contains violations which are unresolved, and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations.

(2) Strike SECTION 3 and SECTION 4 of the bill (page 2, line 22), and substitute new SECTION 3 to read as follows:

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public

necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Amendment No. 1 was adopted without objection.

**SB 1125**, as amended, was passed to third reading.

**CSHB 2877 - LAID ON THE TABLE SUBJECT TO CALL**

Representative Holzheuser moved to lay **CSHB 2877** on the table subject to call.

The motion prevailed without objection.

**SB 1126 ON SECOND READING**  
**(Holzheuser - House Sponsor)**

The chair laid before the house, in lieu of **CSHB 2878**, on its second reading and passage to third reading,

**SB 1126**, A bill to be entitled An Act relating to the modification of an existing facility under the Texas Clean Air Act.

The bill was read second time.

**Amendment No. 1 (Committee Amendment No. 1)**

On behalf of Representative Kuempel, Representative Holzheuser offered the following committee amendment to the bill:

Amend **SB 1126** as follows:

(1) In SECTION 1 of the bill, in Section 382.003(9)(E)(i), Health and Safety Code, (page 2, line 8) between "permit" and "or" insert ", permit amendment".

(2) In SECTION 2 of the bill, in subsection (b) of Section 382.0512, Health and Safety Code, (page 3, line 22), between "facility" and "results" insert "that meets the criteria of Section 382.003(9)(E)"; and strike the words "under Section 382.003(9)(E)".

(3) In SECTION 2 of the bill, in subsection (b)(2) of Section 382.0512, Health and Safety Code, (page 4, line 3), between "permit" and "or" insert "or permit amendment".

(4) In SECTION 2 of the bill, Section 382.0512, Health and Safety Code, (page 4, line 8), strike existing subsection (c) and substitute new subsection (c) to read as follows:

(c) Nothing in this section shall be construed to limit the application of otherwise applicable state or federal requirements, nor shall this section be construed to limit the board's powers of enforcement under this chapter.

(5) Strike SECTION 4 and SECTION 5 of the bill (page 4, line 15), and substitute a new SECTION 4 to read as follows:

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that

this Act take effect and be in force from and after its passage, and it is so enacted.

Amendment No. 1 was adopted without objection.

**SB 1126**, as amended, was passed to third reading.

**CSHB 2878 - LAID ON THE TABLE SUBJECT TO CALL**

Representative Holzheuser moved to lay **CSHB 2878** on the table subject to call.

The motion prevailed without objection.

**SB 1032 ON SECOND READING**  
**(Cook - House Sponsor)**

The chair laid before the house, in lieu of **CSHB 2924**, on its second reading and passage to third reading,

**SB 1032**, A bill to be entitled An Act relating to encumbrances that may be fixed on homestead property.

The bill was read second time.

**Amendment No. 1**

Representative Cook offered the following amendment to the bill:

Amend **SB 1032** as follows:

In Article 1, on page one, line 12 delete "designated as a homestead".

In Article 2, on page two, line 15 delete "designated as a homestead".

Amendment No. 1 was adopted without objection.

**SB 1032**, as amended, was passed to third reading.

**CSHB 2924 - LAID ON THE TABLE SUBJECT TO CALL**

Representative Cook moved to lay **CSHB 2924** on the table subject to call.

The motion prevailed without objection.

**CSHB 1905 ON SECOND READING**

The chair laid before the house, as postponed business, on its second reading and passage to engrossment, the complete committee substitute for **CSHB 1905**.

**CSHB 1905**, A bill to be entitled An Act relating to enforcement of a motor vehicle warranty.

**CSHB 1905** was read second time on May 2 and was postponed until 10 a.m. today.

Representative Combs moved to postpone consideration of **CSHB 1905** until 10 a.m. Monday, May 8.

The motion prevailed without objection.

**CSHB 1111 ON SECOND READING**

The chair laid before the house, as postponed business, on its second reading and passage to engrossment, the complete committee substitute for **CSHB 1111**.

**CSHB 1111**, A bill to be entitled An Act relating to the provision of protective services to persons who are elderly or disabled.

**CSHB 1111** was read second time on May 2 and was postponed until 10 a.m. today.

**Amendment No. 1**

Representative Naishtat offered the following amendment to **CSHB 1111**:

Amend **CSHB 1111** as follows:

(1) On page 6, line 16, strike "by Section 48.002" and substitute "by Section 48.002 for an investigation under this subchapter or as defined by department rules for an investigation under Subchapter E".

(2) On page 13, line 6, strike "FACILITIES" and substitute "FACILITIES AND IN COMMUNITY CENTERS".

(3) On page 13, line 23, strike "facility" and substitute "facility, a community center".

(4) On page 13, line 24, between "facility" and the semicolon, insert "or community center".

(5) On page 13, line 25, between "(1)" and "any", insert "a copy of".

(6) On page 13, line 27, strike "facility", and substitute "facility, community center".

(7) On page 14, line 1, between "(2)" and "the", insert "a copy of".

(8) On page 14, between lines 12 and 13, insert the following:

(g) In this section, "community center" has the meaning assigned by Section 531.002, Health and Safety Code.

Amendment No. 1 was adopted without objection.

**CSHB 1111**, as amended, was passed to engrossment.

**RESOLUTIONS CALENDAR**

The chair laid before the house the following resolution on committee report:

By Saunders, et al.,

**HCR 4**, Authorizing the State Preservation Board to provide for the planting of a tree on the Capitol grounds in memory of Dorothy Sanders.

Representative Saunders moved to postpone consideration of **HCR 4** until 10 a.m. Friday, May 5.

The motion prevailed without objection.

**SB 31 ON SECOND READING**

(Seidlits - House Sponsor)

The chair laid before the house, on its second reading and passage to third reading,

**SB 31**, A bill to be entitled An Act relating to the assessment of attorney's fees, costs, and damages for certain frivolous lawsuits and defenses.

The bill was read second time.

### **Amendment No. 1**

Representatives T. Hunter, Craddick, Duncan, Nixon, Eiland, and Wolens offered the following amendment to the bill:

Amend **SB 31** by striking all below the enacting clause and substituting the following:

SECTION 1. Subtitle A, Title 2, Civil Practice and Remedies Code, is amended by adding Chapter 10 to read as follows:

#### CHAPTER 10. SANCTIONS FOR FRIVOLOUS PLEADINGS AND MOTIONS

Sec. 10.001. SIGNING OF PLEADINGS AND MOTIONS. The signing of a pleading or motion as required by the Texas Rules of Civil Procedure constitutes a certificate by the signatory that to the signatory's best knowledge, information, and belief, formed after reasonable inquiry:

(1) the pleading or motion is not being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) each claim, defense, or other legal contention in the pleading or motion is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) each allegation or other factual contention in the pleading or motion has evidentiary support or, for a specifically identified allegation or factual contention, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) each denial in the pleading or motion of a factual contention is warranted on the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

Sec. 10.002. MOTION FOR SANCTIONS. (a) A party may make a motion for sanctions, describing the specific conduct violating Section 10.001.

(b) The court on its own initiative may enter an order describing the specific conduct that appears to violate Section 10.001 and direct the alleged violator to show cause why the conduct has not violated that section.

(c) The court may award to a party prevailing on the motion under this section the reasonable expenses and attorney's fees incurred in presenting or opposing the motion, and if no due diligence is shown the court may award to the prevailing party all costs for inconvenience, harassment, and out-of-pocket expenses incurred or caused by the subject litigation.

Sec. 10.003. NOTICE AND OPPORTUNITY TO RESPOND. The court shall provide a party who is the subject of a motion for sanctions under Section 10.002 notice of the allegations and a reasonable opportunity to respond to the allegations.

Sec. 10.004. VIOLATION; SANCTION. (a) A court that determines that a person has signed a pleading or motion in violation of Section 10.001 may impose a sanction on the person, a party represented by the person, or both.

(b) The sanction must be limited to what is sufficient to deter repetition of the conduct or comparable conduct by others similarly situated.

(c) A sanction may include:

(1) a directive to the violator to perform, or refrain from performing, an act;

(2) an order to pay a penalty into court;

(3) an order to pay to the other party the amount of the reasonable expenses incurred by the other party because of the filing of the pleading or motion, including reasonable attorney's fees.

(d) The court may not award monetary sanctions against a represented party for a violation of Section 10.001(2).

(e) The court may not award monetary sanctions on its own initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party or the party's attorney who is to be sanctioned.

Sec. 10.005. ORDER. A court shall describe in an order imposing a sanction under this chapter the conduct the court has determined violated Section 10.001 and explain the basis for the sanction imposed.

Sec. 10.006. CONFLICT. Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this chapter.

SECTION 2. This Act takes effect September 1, 1995, and applies only to a pleading or motion in a suit commenced on or after that date. A pleading or motion in a suit commenced before the effective date of this Act is governed by the law applicable to the pleading or motion immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

(Speaker in the chair)

## **Amendment No. 2**

Representative T. Hunter offered the following amendment to Amendment No. 1:

Amend the Hunter, Craddick Amendment to read as follows:

Amend **SB 31** as follows:

On page 2, line 31 insert the following: "(f) The filing of a general denial under Rule 92, Texas Rules of Civil Procedure shall not be deemed a violation of this chapter."

Amendment No. 2 was adopted without objection.

Amendment No. 1, as amended, was adopted without objection.

**SB 31**, as amended, was passed to third reading. (Swinford recorded voting yes)



**SB 32 ON SECOND READING**  
**(Duncan - House Sponsor)**

The speaker laid before the house, on its second reading and passage to third reading,

**SB 32**, A bill to be entitled An Act relating to venue for civil actions.

The bill was read second time.

**Amendment No. 1**

Representative Duncan offered the following amendment to the bill:

Amend **SB 32** (1st Printing) in SECTION 1 of the bill by striking Section 15.001(a), Civil Practice and Remedies Code, and substituting the following:

(a) "Principal office" means a principal office of the corporation, unincorporated association, or partnership in this state in which the decision makers for the organization within this state conduct the daily affairs of the organization. The mere presence of an agency or representative does not establish a "principal office."

Amendment No. 1 was adopted without objection.

**Amendment No. 2**

Representative Duncan offered the following amendment to the bill:

**SB 32** (House Committee Report) as follows:

(1) In SECTION 1, at the beginning of Section 15.002, Civil Practice and Remedies Code (page 1, line 16), between "RULE." and "Except", insert "(a)".

(2) In SECTION 1, at the end of Section 15.002, Civil Practice and Remedies Code (page 2, between lines 5 and 6), insert:

(b) For the convenience of the parties and witnesses and in the interest of justice, a court may transfer an action from a county of proper venue under this Subchapter or Subchapter C to any other county of proper venue on motion of a defendant filed and served concurrently with or before the filing of the answer, where the court finds:

(1) maintenance of the action in the county of suit would work an injustice to the movant considering the movant's economic and personal hardship;

(2) the balance of interests of all the parties predominates in favor of the action being brought in the other county; and

(3) the transfer of the action would not work an injustice to any other party.

(c) A court's ruling or decision to grant or deny a transfer under Subsection (b) is not grounds for appeal or mandamus and is not reversible error.

Amendment No. 2 was adopted without objection.

**SB 32**, as amended, was passed to third reading.

**MESSAGE FROM THE SENATE**

Austin, Texas, May 3, 1995

The Honorable Speaker of the House of Representatives  
House Chamber

The Honorable  
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has passed the following:

**HB 44** by Edwards, Greenberg, Jones, Jesse, et al. (Sponsor-Patterson, Jerry), relating to the creation of an offense to limit access by children to certain firearms and to firearms safety education for schoolchildren.

**HB 1090** by Brimer, Counts, Junell, et al. (Sponsor-Armbrister), relating to the continuation and functions of the Texas Workers' Compensation Insurance Fund.

**HB 1089** by Brimer, Counts, Junell, et al. (Sponsor-Armbrister), relating to the continuation and functions of the Texas Workers' Compensation Commission; providing penalties (amended).

I am directed by the Senate to inform the House that the Senate has granted the request of the House for the appointment of a Conference Committee to adjust the differences between the two Houses on **HB 1863**.

The following have been appointed on the part of the Senate: Senator Zaffirini, Chair, Senator Moncrief, Senator Patterson, Senator Ellis, and Senator Armbrister.

I am directed by the Senate to inform the House that the Senate has refused to concur in House Amendments to **SB 9** and requests the appointment of a Conference Committee to adjust the differences between the two Houses.

The following have been appointed on the part of the Senate: Senator Armbrister, Chair, Senator Wentworth, Senator Montford, Senator Madla, and Senator Leedom.

Respectfully,  
Betty King  
Secretary of the Senate

**SB 28 ON SECOND READING**  
**(Junell - House Sponsor)**

The speaker laid before the house, on its second reading and passage to third reading,

**SB 28**, A bill to be entitled An Act relating to responsibility for, and recovery of, damages in certain civil actions.

The bill was read second time.

**Amendment No. 1 (Committee Amendment No. 1)**

On behalf of Representative Wolens, Representative Seidlits offered the following committee amendment to the bill:

Amend **SB 28**, in SECTION 1, by striking Section 33.013(c), Civil Practice and Remedies Code, and substituting a new Section 33.013(c) to read as follows:

(c) Notwithstanding Subsections [~~Subsection~~] (a) and (b), each liable defendant is, in addition to his liability under Subsection (a), jointly and

severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if:

(1) ~~[no percentage of responsibility is attributed to the claimant and]~~ the percentage of responsibility attributed to the defendant is greater than 20 ~~[40]~~ percent; or

(2) the claimant's personal injury, property damage, ~~[or] death, or other harm~~ is caused by the depositing, discharge, or release into the environment of any hazardous or harmful substance as described in Section 33.011(7) [Subdivision (3)]; or

(3) the claimant's personal injury, property damage, ~~[or] death, or other harm~~ resulted from a ~~["]toxic tort."~~ "Toxic tort" means a cause of action in tort or for breach of implied warranty under Chapter 2, Business & Commerce Code, arising out of exposure to hazardous chemicals, hazardous wastes, hazardous hydrocarbons, similarly harmful organic or mineral substances, hazardous radiation sources, and other similarly harmful substances (which usually, but need not necessarily, arise in the work place), but not including any "drug" as defined in Section 81.001(3), Civil Practice and Remedies Code.]

Representative Seidlits moved to table Amendment No. 1.

The motion to table prevailed. (Danburg recorded voting no)

## **Amendment No. 2**

Representative Junell offered the following amendment to the bill:

Amend **SB 28** (House Committee Report) as follows:

(1) In SECTION 1, in Section 33.004(a), Civil Practice and Remedies Code (page 5, line 7), strike "Prior" and substitute "Except as provided in Subsections (d) and (e), prior".

(2) In SECTION 1, in Section 33.004(b), Civil Practice and Remedies Code, after the period (page 5, line 14), insert "Nothing in this section shall affect the filing of cross-claims or counterclaims."

(3) In SECTION 1, strike Section 33.011(6)(B), Civil Practice and Remedies Code (page 8, lines 3-12), and substitute:

(B) The term "responsible third party" does not include:

(i) an employer who maintained worker's compensation insurance coverage, as defined by Section 401.011(44), Labor Code, at the time of the act, event, or occurrence made the basis of the claimant's suit; or

(ii) a person or entity that is a debtor in bankruptcy proceedings or a person or entity against whom this claimant's claim has been discharged in bankruptcy, except to the extent that liability insurance or other source of third party funding may be available to pay claims asserted against the debtor.

(4) In SECTION 1, strike Section 33.013(c), Civil Practice and Remedies Code (page 10, line 17, through page 11, line 13), and substitute:

(c) Notwithstanding Subsections ~~[Subsection]~~ (a) and (b), each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if:

~~[(1) no percentage of responsibility is attributed to the claimant and]~~ the percentage of responsibility attributed to the defendant is equal to or greater than 15 ~~[40]~~ percent and; ~~[-or]~~

(1) ~~[(2)]~~ the claimant's personal injury, property damage, ~~[or]~~ death, or other harm is caused by the depositing, discharge, or release into the environment of any hazardous or harmful substance as described in Section 33.011(7) [Subdivision (3)]; or

(2) ~~[(3)]~~ the claimant's personal injury, property damage, ~~[or]~~ death, or other harm resulted from a ~~[""]~~ toxic tort. ~~[""Toxic tort" means a cause of action in tort or for breach of implied warranty under Chapter 2, Business & Commerce Code, arising out of exposure to hazardous chemicals, hazardous wastes, hazardous hydrocarbons, similarly harmful organic or mineral substances, hazardous radiation sources, and other similarly harmful substances (which usually, but need not necessarily, arise in the work place), but not including any "drug" as defined in Section 81.001(3), Civil Practice and Remedies Code.]~~

(5) Strike SECTION 2 (page 14, lines 18-22) and substitute a new SECTION 2 to read as follows:

SECTION 2. This Act takes effect September 1, 1995, and applies to all causes of action that accrue on or after that date. This Act applies to all causes of action that accrued before the effective date of this Act and upon which suit is filed on or after September 1, 1996. A cause of action that accrued before the effective date of this Act and upon which suit is filed prior to September 1, 1996, is governed by the law in effect immediately prior to the effective date of this Act and that law is continued in effect for that purpose.

Amendment No. 2 was adopted without objection.

### **Amendment No. 3**

Representatives Junell and Combs offered the following amendment to the bill:

Amend **SB 28** as follows:

(1) Following SECTION 1 of the bill (House Committee Report, page 14, between lines 17 and 18) insert the following new section:

SECTION 2. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 95 to read as follows:

#### CHAPTER 95. PROPERTY OWNER'S LIABILITY FOR ACTS OF INDEPENDENT CONTRACTORS AND AMOUNT OF RECOVERY

Sec.95.001. DEFINITIONS. In this chapter:

(1) "Claim" means a claim for damages caused by negligence, including a counterclaim, crossclaim, or third-party claim.

(2) "Claimant" means party making a claim subject to this chapter.

(3) "Property owner" means a person or entity that owns real property primarily used for commercial or business purposes.

Sec.95.9002 APPLICABILITY. This chapter applies only to a claim:

(1) against a property owner, contractor, or subcontractor for personal injury, death, or property damage to an owner, a contractor, or a subcontractor or an employee of a contractor or subcontractor; and

(2) that arises from the condition or use of an improvement to real property where the contractor or subcontractor constructs, repairs, renovates, or modifies the improvement.

Sec.95.003. LIABILITY FOR ACTS OF INDEPENDENT CONTRACTORS. A property owner is not liable for a personal injury, death, or property damage to a contractor, subcontractor, or an employee of a contractor or subcontractor, who constructs, repairs, renovates, or modifies an improvement to real property, including a personal injury, death, or property damage arising from the failure to provide a safe workplace unless:

(1) the property owner exercises or retains some control over the manner in which the work is performed, other than the right to order the work to start or stop or to inspect progress or receive reports; and

(2) the property owner had actual knowledge of the danger or condition resulting in the personal injury, death, or property damage and failed to adequately warn.

Sec.95.004 EVIDENCE ADMISSIBLE. In the trial of a case against a contractor, subcontractor, or property owner for personal injury, property damage, or death to a contractor, a subcontractor, or an employee of a contractor or subcontractor that arises from the condition or use of an improvement to real property where the contractor or subcontractor constructs, repairs, renovates, or modifies the improvement, the trial judge, outside the presence of the jury, shall receive evidence of workers' compensation benefits paid and shall deduct the amount of the benefits from the damages awarded by the trier of fact. The deduction for workers' compensation benefits does not apply unless the workers' compensation carrier's subrogation rights have been waived.

(2) Renumber subsequent sections of the bill accordingly.

Representative Thompson raised a point of order against further consideration of Amendment No. 3 on the grounds that Amendment No. 3 violates Rule 11, Section 2, of the House Rules.

The point of order was withdrawn.

A record vote was requested.

Amendment No. 3 was adopted by (Record 294): 135 Yeas, 13 Nays, 1 Present, not voting.

Yeas — Alexander; Allen; Alvarado; Averitt; Bailey; Berlanga; Black; Bosse; Brady; Brimer; Carona; Carter; Chisum; Clemons; Coleman; Combs; Cook; Corte; Counts; Craddick; Cuellar, H.; Cuellar, R.; Culberson; Danburg; Davila; De La Garza; Dear; Delisi; Denny; Driver; Duncan; Dutton; Ehrhardt; Eiland; Elkins; Farrar; Finnell; Gallego; Glaze; Goodman; Goolsby; Gray; Greenberg; Grusendorf; Gutierrez; Haggerty; Hamric; Harris; Hartnett; Hawley; Heflin; Hernandez; Hightower; Hilbert; Hilderbran; Hill; Hirschi; Hochberg; Holzheuser; Horn; Howard; Hunter, B.; Hunter, T.; Janek; Johnson; Jones, D.; Junell; Kamel; King; Krusee; Kubiak; Kuempel; Lewis, G.; Lewis, R.; Luna; Madden; Marchant; Maxey; McCall; McCoulskey; McDonald; Moffat; Moreno; Mowery; Munoz; Naishtat; Nixon; Oakley; Ogden; Oliveira; Park; Patterson; Pickett; Pitts; Place; Price; Puente; Rabuck; Ramsay; Rangel; Raymond; Reyna; Rhodes; Rodriguez; Romo; Rusling; Sadler; Saunders; Seidlits; Serna; Shields; Siebert; Smithee; Solis; Solomons; Staples; Stiles; Swinford; Talton; Telford; Tillery; Torres; Turner, B.; Uher; Van de Putte; Walker; West; Williamson; Willis; Wohlgemuth; Wolens; Woolley; Yarbrough; Yost; Zbraneck.

Nays — Alonzo; Conley; Crabb; Davis; Dukes; Edwards; Giddings; Jackson; Jones, J.; Longoria; Thompson; Turner, S.; Wilson.

Present, not voting — Mr. Speaker(C).

Absent — Hudson.

### STATEMENT OF VOTE

I was shown voting no on Record No. 294. I intended to vote yes.

Crabb

**SB 28**, as amended, was passed to third reading. (Danburg recorded voting no)

### MESSAGE FROM THE SENATE

Austin, Texas, May 3, 1995

The Honorable Speaker of the House of Representatives  
House Chamber

The Honorable  
Mr. Speaker:

I am directed by the Senate to inform the House that the Senate has passed the following:

**SB 272** by Ratliff, relating to the forfeiture or destruction of weapons belonging to persons convicted of or receiving deferred adjudication for the commission of certain crimes.

**SB 558** by West, Royce, relating to construction contract provisions, construction trust funds, and the creation of and management policies applicable to a construction account created to hold funds associated with a construction contract; providing penalties.

**SB 676** by Lucio, relating to the prosecution for theft of certain pesticides.

**SB 973** by Haywood, relating to the disclosure of certain information relating to certain patients of a physician.

**SB 1335** by Barrientos, relating to the waiver of, moratorium on, or alternate use of municipal impact fees.

**SB 1377** by Wentworth, relating to recreational easements retained by the Lower Colorado River Authority after the sale of land.

**SB 1492** by Shapiro, relating to the confidentiality of information derived from an audit to ascertain compliance with the payment of the hotel occupancy tax.

Respectfully,  
Betty King  
Secretary of the Senate

### HB 668 ON SECOND READING

The speaker laid before the house, on its second reading and passage to engrossment, the complete committee substitute for **HB 668**.

**CSHB 668**, A bill to be entitled An Act relating to civil remedies for deceptive trade practices and certain related consumer claims.

**CSHB 668** was read second time.

**Amendment No. 1**

Representative Junell offered the following amendment to **CSHB 668**:

Amend **CSHB 668** by striking all below the enacting clause and substituting the following:

SECTION 1. Sections 17.42, 17.43, and 17.44, Business & Commerce Code, are amended to read as follows:

Sec. 17.42. WAIVERS: PUBLIC POLICY. (a) Any waiver by a consumer of the provisions of this subchapter is contrary to public policy and is unenforceable and void; provided, however, that a waiver is valid and enforceable if:

(1) the waiver is in writing and is signed by the consumer;

(2) ~~[a defendant in an action or claim under this subchapter pleads and proves:~~

~~[(1)]~~ the consumer is not in a significantly disparate bargaining position; and

(3) ~~[(2)]~~ the consumer is represented by legal counsel in seeking or acquiring the goods or services; ~~other than the purchase or lease of a family residence occupied or to be occupied as the consumer's residence, by a purchase or a lease for a consideration paid or to be paid that exceeds \$500,000; and~~

~~[(3)] the consumer waives all or part of this subchapter, other than Section 17.555, by an express provision in a written contract signed by both the consumer and the consumer's legal counsel; and provided, however, that a business consumer with assets of \$5 million or more according to the most recent financial statement of the business consumer prepared in accordance with generally accepted accounting principles that has knowledge and experience in financial and business matters that enable it to evaluate the merits and risks of a transaction and that is not in a significantly disparate bargaining position may by written contract waive the provisions of this subchapter, other than Section 17.555].~~

(b) A waiver under Subsection (a) is not effective if the consumer's legal counsel was directly or indirectly identified, suggested, or selected by a defendant or an agent of the defendant ~~[The existence or absence of a disparate bargaining position may not be established as a matter of law solely by evidence of the consumer's financial position relative to other parties to the contract or by matters contained in a written contract relating to the relative bargaining position of the parties].~~

(c) A waiver under this section must be:

(1) conspicuous and in bold-face type of at least 10 points in size;

(2) identified by the heading "Waiver of Consumer Rights," or words of similar meaning; and

(3) in substantially the following form:

"I waive my rights under the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Business & Commerce Code, a law that gives consumers special rights and protections. After consultation with an attorney of my own selection, I voluntarily consent to this waiver."

(d) The waiver required by Subsection (c) may be modified to waive only specified rights under this subchapter.

(e) The fact that a consumer has signed a waiver under this section is not a defense to an action brought by the attorney general under Section 17.47.

Sec. 17.43. CUMULATIVE REMEDIES. The provisions of this subchapter are not exclusive. The remedies provided in this subchapter are in addition to any other procedures or remedies provided for in any other law; provided, however, that no recovery shall be permitted under both this subchapter and another law of both ~~[actual]~~ damages and penalties for the same act or practice. A violation of a provision of law other than this subchapter is not in and of itself a violation of this subchapter. An act or practice that is a violation of a provision of law other than this subchapter may be made the basis of an action under this subchapter if the act or practice is proscribed by a provision of this subchapter or is declared by such other law to be actionable under this subchapter. The provisions of this subchapter do not in any way preclude other political subdivisions of this state from dealing with deceptive trade practices.

Sec. 17.44. CONSTRUCTION AND APPLICATION. (a) This subchapter shall be liberally construed and applied to promote its underlying purposes, which are to provide:

(1) special remedies to [protect] consumers who claim economic damages that result from [against] false, misleading, and deceptive business practices, unconscionable actions, or [and] breaches of warranty; and

(2) [to provide] efficient and economical procedures for the remedies described by Subdivision (1) [to secure such protection].

(b) Chapter 27, Property Code, prevails over this subchapter to the extent of any conflict.

SECTION 2. Section 17.45, Business & Commerce Code, is amended by amending Subdivisions (5) and (9) and adding Subdivisions (11) and (12) to read as follows:

(5) "Unconscionable action or course of action" means an act or practice which, to a consumer's ~~[person's]~~ detriment,[-

~~[(A)]~~ takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer ~~[a person]~~ to a grossly unfair degree;[-  
or

~~[(B)] results in a gross disparity between the value received and consideration paid, in a transaction involving transfer of consideration].~~

(9) "Knowingly" means actual awareness of the falsity, deception, or unfairness of the act or practice giving rise to the consumer's claim or, in an action brought under Subdivision (2) of Subsection (a) of Section 17.50, actual awareness of the act, ~~[or] practice, condition, defect, or failure~~ constituting the breach of warranty, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

(11) "Economic damages" means compensatory damages for pecuniary loss, including costs of repair and replacement. The term does not include exemplary damages or damages for physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society.



(12) "Residence" means a building:

(A) that is a single-family house, duplex, triplex, or quadruplex or a unit in a multiunit residential structure in which title to the individual units is transferred to the owners under a condominium or cooperative system; and

(B) that is occupied or to be occupied as the consumer's residence.

SECTION 3. Section 17.46(b), Business & Commerce Code, is amended to read as follows:

(b) Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

- (1) passing off goods or services as those of another;
- (2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) using deceptive representations or designations of geographic origin in connection with goods or services;
- (5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;
- (6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;
- (7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (8) disparaging the goods, services, or business of another by false or misleading representation of facts;
- (9) advertising goods or services with intent not to sell them as advertised;
- (10) advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;
- (11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;
- (12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
- (13) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;
- (14) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;
- (15) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;

(16) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;

(17) advertising of any sale by fraudulently representing that a person is going out of business;

(18) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(19) representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 and Sections 2A.212 through 2A.216 of the Business & Commerce Code to involve obligations in excess of those which are appropriate to the goods;

(20) selling or offering to sell, either directly or associated with the sale of goods or services, a right of participation in a multi-level distributorship. As used herein, "multi-level distributorship" means a sales plan for the distribution of goods or services in which promises of rebate or payment are made to individuals, conditioned upon those individuals recommending or securing additional individuals to assume positions in the sales operation, and where the rebate or payment is not exclusively conditioned on or in relation to proceeds from the retail sales of goods;

(21) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

(22) filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit he neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract;

(23) the failure to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed; ~~or~~

(24) using the term "corporation," "incorporated," or an abbreviation of either of those terms in the name of a business entity that is not incorporated under the laws of this state or another jurisdiction; or

(25) taking advantage of a disaster declared by the governor under Chapter 418, Government Code, by:

(A) selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price; or

(B) demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, or another necessity.

SECTION 4. Section 17.49, Business & Commerce Code, is amended by adding Subsections (c), (d), (e), (f), and (g) to read as follows:

(c) Nothing in this subchapter shall apply to a claim for damages based on the rendering of a professional service, the essence of which is the providing of advice, judgment, opinion, or similar professional skill. This exemption does not apply to:

(1) an express misrepresentation of a material fact that cannot be characterized as advice, judgment, or opinion;

(2) a failure to disclose information in violation of Section 17.46(b)(23);

(3) an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion; or

(4) breach of an express warranty that cannot be characterized as advice, judgment, or opinion.

(d) Subsection (c) applies to a cause of action brought against the person who provided the professional service and a cause of action brought against any entity that could be found to be vicariously liable for the person's conduct.

(e) Nothing in this subchapter shall apply to a cause of action for bodily injury or death, or for the infliction of mental anguish or emotional distress.

(f) Nothing in this subchapter shall apply to a claim arising out of a written contract if:

(1) the consideration paid or to be paid exceeds \$100,000;

(2) in seeking or acquiring the goods or services the consumer is represented by legal counsel who is not directly or indirectly identified, suggested, or selected by the defendant or an agent of the defendant; and

(3) the contract does not involve a consumer's residence.

(g) Nothing in this subchapter shall apply to a cause of action arising from a transaction, a project, or a set of transactions relating to the same project, involving total consideration by the consumer of more than \$250,000, other than a cause of action involving a consumer's residence.

SECTION 5. Section 17.50, Business & Commerce Code, is amended to read as follows:

Sec. 17.50. RELIEF FOR CONSUMERS. (a) A consumer may maintain an action where any of the following constitute a producing cause of economic [actual] damages:

(1) the use or employment by any person of a false, misleading, or deceptive act or practice that is;

(A) specifically enumerated in a subdivision of Subsection (b) of Section 17.46 of this subchapter; and

(B) relied on by a consumer to the consumer's detriment;

(2) breach of an express or implied warranty;

(3) any unconscionable action or course of action by any person; or

(4) the use or employment by any person of an act or practice in violation of Article 21.21, [Texas] Insurance Code[, as amended, or rules or regulations issued by the State Board of Insurance under Article 21.21, Texas Insurance Code, as amended].

(b) In a suit filed under this section, each consumer who prevails may obtain:

(1) the amount of economic [actual] damages found by the trier of fact. [In addition the court shall award two times that portion of the actual damages that does not exceed \$1,000.] If the trier of fact finds that the conduct of the defendant was committed knowingly, the trier of fact may award not more than three times the amount of economic [actual] damages [in excess of \$1,000, provided that:

~~[(A) the provisions of Chapters 33 and 41, Civil Practice and Remedies Code, shall govern the determination of the consumer's right under this subchapter to recover actual and other damages, including exemplary damages, and the amount of those damages that may be recovered by the consumer under this subchapter, in an action seeking damages for (i) death; (ii) personal injury other than mental anguish or distress associated with a violation of this subchapter that does not involve death or bodily injury; or (iii) damage to property other than the goods acquired by the purchase or lease that is involved in the consumer's action or claim if that damage arises out of an occurrence that involves death or bodily injury; and~~

~~[(B) only in an action under this subchapter that is subject to Paragraph (A) of this subdivision, the consumer's right to recover damages shall be subject to any defense or defensive matter that could be considered by the trier of fact in an action subject to Chapter 33, Civil Practice and Remedies Code, in determining the percentage of responsibility attributable to the consumer claimant under that chapter];~~

(2) an order enjoining such acts or failure to act;

(3) orders necessary to restore to any party to the suit any money or property, real or personal, which may have been acquired in violation of this subchapter; and

(4) any other relief which the court deems proper, including the appointment of a receiver or the revocation of a license or certificate authorizing a person to engage in business in this state if the judgment has not been satisfied within three months of the date of the final judgment. The court may not revoke or suspend a license to do business in this state or appoint a receiver to take over the affairs of a person who has failed to satisfy a judgment if the person is a licensee of or regulated by a state agency which has statutory authority to revoke or suspend a license or to appoint a receiver or trustee. Costs and fees of such receivership or other relief shall be assessed against the defendant.

(c) On a finding by the court that an action under this section was groundless in fact or law or [and] brought in bad faith, or brought for the purpose of harassment, the court shall award to the defendant reasonable and necessary attorneys' fees and court costs.

(d) Each consumer who prevails shall be awarded court costs and reasonable and necessary attorneys' fees.

(e) In computing additional damages under Subsection (b), attorneys' fees, costs, and prejudgment interest may not be considered.

(f) A court may not award prejudgment interest applicable to:

(1) damages for future loss under this subchapter; or

(2) additional damages under Subsection (b).

(g) Chapter 41, Civil Practice and Remedies Code, does not apply to a cause of action brought under this subchapter.

(h) Notwithstanding any other provision of this subchapter, if a claimant is granted the right to bring a cause of action under this subchapter by another law, the claimant is not limited to recovery of economic damages only, but may recover any actual damages incurred by the claimant. For the purpose of the recovery of damages for a cause of action described by this subsection only, a reference in this subchapter to economic damages means actual damages. [This subsection applies to an action brought under this chapter for a violation of Article 21-21, Insurance Code.]

SECTION 6. Section 17.505, Business & Commerce Code, is amended to read as follows:

Sec. 17.505. NOTICE; ~~INSPECTION~~[~~—OFFER OF SETTLEMENT~~].

(a) As a prerequisite to filing a suit seeking damages under Subdivision (1) of Subsection (b) of Section 17.50 of this subchapter against any person, a consumer shall give written notice to the person at least 60 days before filing the suit advising the person in reasonable detail of the consumer's specific complaint and the amount of economic [~~actual~~] damages and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant. During the 60-day period a written request to inspect, in a reasonable manner and at a reasonable time and place, the goods that are the subject of the consumer's action or claim may be presented to the consumer. If the consumer [~~unreasonably~~] refuses to permit the inspection by the person or the person's designated representative, the court shall not award the two times economic [~~actual~~] damages not exceeding \$1,000, as provided in Subsection (b) of Section 17.50 of this subchapter.

(b) If the giving of 60 days' written notice is rendered impracticable by reason of the necessity of filing suit in order to prevent the expiration of the statute of limitations or if the consumer's claim is asserted by way of counterclaim, the notice provided for in Subsection (a) of this section is not required, but the tender provided for by [~~Subsection (c) of this section and by~~] Subsection (d), Section 17.506 of this subchapter may be made within 60 days after service [~~the filing~~] of the suit or counterclaim.

(c) A person against whom a suit is pending who does not receive written notice, as required by Subsection (a), may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the suit is pending. This subsection does not apply if Subsection (b) applies. [Any person who receives the written notice provided by Subsection (a) of this section may, within 60 days after the receipt of the notice, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date of the written notice. A person who does not receive such a written notice due to the consumer's suit

~~or counterclaim being filed as provided for by Subsection (b) of this section may, within 60 days after the filing of such suit or counterclaim, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date the suit or counterclaim was filed. Any offer of settlement not accepted within 30 days of receipt by the consumer shall be deemed to have been rejected by the consumer.]~~

~~(d) The court shall abate the suit if the court, after a hearing, finds that the person is entitled to an abatement because notice was not provided as required by this section. A suit is automatically abated without the order of the court beginning on the 11th day after the date a plea in abatement is filed under Subsection (c) if the plea in abatement:~~

~~(1) is verified and alleges that the person against whom the suit is pending did not receive the written notice as required by Subsection (a); and~~

~~(2) is not controverted by an affidavit filed by the consumer before the 11th day after the date on which the plea in abatement is filed.~~

~~(e) An abatement under Subsection (d) continues until the 60th day after the date that written notice is served in compliance with Subsection (a). [A settlement offer made in compliance with Subsection (c) of this section, if rejected by the consumer, may be filed with the court together with an affidavit certifying its rejection. If the amount tendered in the settlement offer is the same as or more than, or if the court finds that amount to be substantially the same as, the actual damages found by the trier of fact, the consumer may not recover an amount in excess of the amount tendered in the settlement offer or the amount of actual damages found by the trier of fact, whichever is less. Such settlement offer shall not be admissible as evidence before a jury.]~~

~~[(e) The tender of an offer of settlement is not an admission of engaging in an unlawful act or practice or of liability under this Act. Evidence of a settlement offer may be introduced only to determine the reasonableness of the settlement offer as provided for by Subsection (d) of this section.]~~

SECTION 7. Subchapter E, Chapter 17, Business & Commerce Code, is amended by adding Sections 17.5051 and 17.5052 to read as follows:

Sec. 17.5051. MEDIATION. (a) A party may, not later than the 90th day after the date of service of a pleading in which relief under this subchapter is sought, file a motion to compel mediation of the dispute in the manner provided by this section.

(b) The court shall, not later than the 30th day after the date a motion under this section is filed, sign an order setting the time and place of the mediation.

(c) If the parties do not agree on a mediator, the court shall appoint the mediator.

(d) Mediation shall be held within 30 days after the date the order is signed, unless the parties agree otherwise or the court determines that additional time, not to exceed an additional 30 days, is warranted.

(e) Except as agreed to by all parties who have appeared in the action, each party who has appeared shall participate in the mediation and, except as provided by Subsection (f), shall share the mediation fee.

(f) A party may not compel mediation under this section if the amount of

economic damages claimed is less than \$15,000, unless the party seeking to compel mediation agrees to pay the costs of the mediation.

(g) Except as provided in this section, Section 154.023, Civil Practice and Remedies Code, and Subchapters C and D, Chapter 154, Civil Practice and Remedies Code, apply to the appointment of a mediator and to the mediation process provided by this section.

(h) This section does not apply to an action brought by the attorney general under Section 17.47.

Sec. 17.5052. OFFERS OF SETTLEMENT. (a) A person who receives notice under Section 17.505 may tender an offer of settlement at any time during the period beginning on the date the notice is received and ending on the 60th day after that date.

(b) If a mediation under Section 17.5051 is not conducted, the person may tender an offer of settlement at any time during the period beginning on the date an original answer is filed and ending on the 90th day after that date.

(c) If a mediation under Section 17.5051 is conducted, a person against whom a claim under this subchapter is pending may tender an offer of settlement during the period beginning on the day after the date that the mediation ends and ending on the 20th day after that date.

(d) An offer of settlement tendered by a person against whom a claim under this subchapter is pending must include an offer to pay the following amounts of money, separately stated:

(1) an amount of money or other consideration, reduced to its cash value, as settlement of the consumer's claim for damages; and

(2) an amount of money to compensate the consumer for the consumer's reasonable and necessary attorneys' fees incurred as of the date of the offer.

(e) Unless both parts of an offer of settlement required under Subsection (d) are accepted by the consumer not later than the 30th day after the date the offer is made, the offer is rejected.

(f) A settlement offer tendered by a person against whom a claim under this subchapter is pending that complies with this section and that has been rejected by the consumer may be filed with the court with an affidavit certifying its rejection.

(g) If the court finds that the amount tendered in the settlement offer for damages under Subsection (d)(1) is the same as, substantially the same as, or more than the damages found by the trier of fact, the consumer may not recover as damages any amount in excess of the lesser of:

(1) the amount of damages tendered in the settlement offer; or

(2) the amount of damages found by the trier of fact.

(h) If the court makes the finding described by Subsection (g), the court shall determine reasonable and necessary attorneys' fees to compensate the consumer for attorneys' fees incurred before the date and time of the rejected settlement offer. If the court finds that the amount tendered in the settlement offer to compensate the consumer for attorneys' fees under Subsection (d)(2) is the same as, substantially the same as, or more than the amount of reasonable and necessary attorneys' fees incurred by the consumer as of the date of the offer, the consumer may not recover attorneys' fees greater than the amount of fees tendered in the settlement offer.



(i) If the court finds that the offering party could not perform the offer at the time the offer was made or that the offering party substantially misrepresented the cash value of the offer, Subsections (g) and (h) do not apply.

(j) If Subsection (g) does not apply, the court shall award as economic damages the amount found by the trier of fact, subject to Sections 17.50 and 17.501. If Subsection (h) does not apply, the court shall award attorneys' fees as provided by Section 17.50(d).

(k) An offer of settlement is not an admission of engaging in an unlawful act or practice or liability under this subchapter. Except as otherwise provided by this section, an offer or a rejection of an offer may not be offered in evidence at trial for any purpose.

SECTION 8. Subsection (d), Section 17.506, Business & Commerce Code, is amended to read as follows:

(d) In an action brought under Section 17.50 of this subchapter, it is a defense to a cause of action if the defendant proves that he received notice from the consumer advising the defendant of the nature of the consumer's specific complaint and of the amount of economic [actual] damages and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant, and that within 30 days after the day on which the defendant received the notice the defendant tendered to the consumer:

- (1) the amount of economic [actual] damages claimed; and
- (2) the expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant.

SECTION 9. Section 17.56, Business & Commerce Code, is amended to read as follows:

Sec. 17.56. VENUE. An action brought under this subchapter may be brought:

(1) in any county in which venue is proper under Chapter 15, Civil Practice and Remedies Code; or

(2) [which alleges a claim to relief under Section 17.50 of this subchapter may be commenced in the county in which the person against whom the suit is brought resides, has his principal place of business, or has a fixed and established place of business at the time the suit is brought or in the county in which the alleged act or practice occurred or] in a county in which the defendant or an authorized agent of the defendant solicited the transaction made the subject of the action at bar.

SECTION 10. Section 27.004, Property Code, is amended by adding new Subsections (d) and (e) and relettering existing Subsections (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m) to read as follows:

(d) The court shall abate a suit governed by this section if Subsection (c) does not apply and the court, after a hearing, finds that the contractor is entitled to an abatement because notice was not provided as required by Subsection (a). A suit is automatically abated without the order of the court beginning on the 11th day after the date a plea in abatement is filed if the plea in abatement:

- (1) is verified and alleges that the person against whom the suit is pending did not receive the written notice as required by Subsection (a); and
- (2) is not controverted by an affidavit filed by the claimant before the 11th day after the date on which the plea in abatement is filed.



(e) An abatement under Subsection (d) continues until the 60th day after the date that written notice is served in compliance with Subsection (a).

(f) ~~[(d)]~~ If a claimant unreasonably rejects an offer made as provided by this section or does not permit the contractor or independent contractor a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement, the claimant may not recover an amount in excess of the reasonable cost of the repairs which are necessary to cure the construction defect and which are the responsibility of the contractor and may recover only the amount of reasonable and necessary attorney's fees and costs incurred before the offer was rejected or considered rejected.

(g) ~~[(e)]~~ If a contractor fails to make a reasonable offer under this section, or fails to make a reasonable attempt to complete the repairs specified in an accepted offer made under this section, or fails to complete, in a good and workmanlike manner, the repairs specified in an accepted offer made under this section, the limitations on damages and defenses to liability provided for in this section shall not apply.

(h) ~~[(f)]~~ Except as provided by Subsection (f) ~~[(d)]~~, in a suit subject to this chapter the claimant may recover only the following damages proximately caused by a construction defect:

(1) the reasonable cost of repairs necessary to cure any construction defect that the contractor failed to cure;

(2) the reasonable expenses of temporary housing reasonably necessary during the repair period;

(3) the reduction in market value, if any, to the extent the reduction is due to structural failure; and

(4) reasonable and necessary attorney's fees.

(i) ~~[(g)]~~ The total damages awarded in a suit subject to this chapter may not exceed the claimant's purchase price for the residence.

(j) ~~[(h)]~~ An offer of settlement made under this section that is not accepted before the 25th day after the date the offer is received by the claimant is considered rejected.

(k) ~~[(i)]~~ An affidavit certifying rejection of a settlement offer under this section may be filed with the court. The trier of fact shall determine the reasonableness of a rejection of an offer of settlement made under this section.

(l) ~~[(j)]~~ A contractor who makes or provides for repairs under this section is entitled to take reasonable steps to document the repair and to have it inspected.

(m) ~~[(k)]~~ Notwithstanding Subsections (a), (b), and (c), a contractor who receives written notice of a construction defect resulting from work performed by the contractor or an agent, employee, or subcontractor of the contractor and creating an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus attorney's fees and costs in addition to any other damages recoverable under any law not inconsistent with the provisions of this chapter.

(n) ~~[(l)]~~ This section does not preclude a contractor from making a monetary settlement offer.

(o) [(m)] The inspection and repair provisions of this chapter are in addition to any rights of inspection and settlement provided by common law or by another statute, including Section 17.505, Business & Commerce Code.

SECTION 11. Section 4, Article 21.21, Insurance Code, is amended to read as follows:

Sec. 4. UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(1) Misrepresentations and False Advertising of Policy Contracts. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statements as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance;

(2) False Information and Advertising Generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading;

(3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any insurer, and which is calculated to injure any person engaged in the business of insurance;

(4) Boycott, Coercion and Intimidation. Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance;

(5) False Financial Statements. (a) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive;

(b) Making any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed

to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, wilfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer;

(6) Stock Operations and Advisory Board Contracts. Issuing or delivering or permitting agents, officers or employees to issue or deliver, company stock or other capital stock, or benefit certificates or shares in any corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance. Provided, however, that nothing in this subsection shall be construed as prohibiting the issuing or delivery of participating insurance policies otherwise authorized by law.

(7) Unfair Discrimination. (a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract;

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever;

(c) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to renew, cancelling or limiting the amount of coverage on a policy of insurance covered by Subchapter C, Chapter 5, of this code because of the geographic location of the risk unless:

(1) the refusal, cancellation or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

(2) the refusal, cancellation or limitation is required by law or regulatory mandate.

(8) Rebates. (a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract;

(b) Nothing in clause 7 or paragraph (a) of clause 8 of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

(i) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from non-participating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(ii) in the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses;

(iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

(9) Deceptive Name, Word, Symbol, Device, or Slogan. Using, displaying, publishing, circulating, distributing, or causing to be used, displayed, published, circulated, or distributed in any letter, pamphlet, circular, contract, policy, evidence of coverage, article, poster, or other document, literature, or public media of:

(a) a name as the corporate or business name of a person or entity engaged in an insurance or insurance related business in this state that is the same as, or deceptively similar to, the name adopted and used by an insurance entity, health maintenance organization, third party administrator, or group hospital service company authorized to do business under the laws of this state; or

(b) a word, symbol, device, slogan, or any combination of these items, whether registered or not registered, that is the same as or deceptively similar to one adopted and used by an insurance entity, health maintenance organization, third party administrator, or group hospital service company to distinguish such entities, products, or service from other entities, and includes the title, designation, character names, and distinctive features of broadcast or other advertising.

Where two persons or entities are using a name, word, symbol, device, slogan, or any combination of these items that are the same or deceptively similar and are likely to cause confusion or a mistake, the user who can demonstrate the first continuous actual use of such name, word, symbol, device, slogan, or combination of these items shall not have committed an unfair method of competition or deceptive act or practice.

(10) Unfair Settlement Practices. (a) Engaging in any of the following unfair settlement practices with respect to a claim by an insured or beneficiary:

(i) misrepresenting to a claimant a material fact or policy provision relating to coverage at issue;

(ii) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear;

(iii) failing to attempt, in good faith, to effectuate a prompt, fair, and equitable settlement under one portion of a policy of a claim

with respect to which the insurer's liability has become reasonably clear in order to influence the claimant to settle an additional claim under another portion of the coverage, provided that this prohibition does not apply if payment under one portion of the coverage constitutes evidence of liability under another portion of the policy;

(iv) failing to provide promptly to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or for the offer of a compromise settlement of a claim;

(v) failing within a reasonable time to:

(A) affirm or deny coverage of a claim to a policyholder; or

(B) submit a reservation of rights to a policyholder;

(vi) refusing, failing, or unreasonably delaying an offer of settlement under applicable first-party coverage on the basis that other coverage may be available or that third parties are responsible for the damages suffered, except as may be specifically provided in the policy;

(vii) undertaking to enforce a full and final release of a claim from a policyholder when only a partial payment has been made, provided that this prohibition does not apply to a compromise settlement of a doubtful or disputed claim;

(viii) refusing to pay a claim without conducting a reasonable investigation with respect to the claim;

(ix) with respect to a Texas personal auto policy, delaying or refusing settlement of a claim solely because there is other insurance of a different type available to satisfy all or any part of the loss forming the basis of that claim; or

(x) requiring a claimant, as a condition of settling a claim, to produce the claimant's federal income tax returns for examination or investigation by the person unless:

(A) the claimant is ordered to produce those tax returns by a court;

(B) the claim involves a fire loss; or

(C) the claim involves lost profits or income.

(b) Paragraph (a) of this clause does not provide a cause of action to a third party asserting one or more claims against an insured covered under a liability insurance policy.

(11) Misrepresentation of Insurance Policy. Misrepresenting an insurance policy by:

(a) making an untrue statement of material fact;

(b) failing to state a material fact that is necessary to make other statements made not misleading, considering the circumstances under which the statements were made;

(c) making a statement in such manner as to mislead a reasonably prudent person to a false conclusion of a material fact;

(d) making a material misstatement of law; or

(e) failing to disclose any matter required by law to be disclosed, including a failure to make disclosure in accordance with another provision of this code.

SECTION 12. Article 21.21, Insurance Code, is amended by adding Section 11A to read as follows:

Sec. 11A. DOUBLE RECOVERY PROHIBITED. A person may not recover damages and penalties for the same act or practice under both this Article and under another law.

SECTION 13. Section 16, Article 21.21, Insurance Code, is amended to read as follows:

Sec. 16. RELIEF AVAILABLE TO INJURED PARTIES. (a) Any person who has sustained actual damages ~~caused by [as a result of]~~ another's engaging in an act or practice declared in Section 4 of this Article ~~[or in rules or regulations lawfully adopted by the Board under this Article]~~ to be unfair methods of competition or unfair or deceptive acts or practices in the business of insurance or in any practice specifically enumerated in a subdivision of [defined by] Section 17.46(b), [17.46 of the] Business & Commerce Code, [as amended,] as an unlawful deceptive trade practice may maintain an action against the person or persons engaging in such acts or practices. To maintain an action for a deceptive act or practice enumerated in Section 17.46(b), Business & Commerce Code, a person must show that the person has relied on the act or practice to the person's detriment.

(b) In a suit filed under this section, any plaintiff who prevails may obtain:

(1) the amount of actual damages plus court costs and reasonable and necessary attorneys' fees. If the trier of fact finds that the defendant knowingly committed the acts complained of, the trier of fact may award not more than three [court shall award, in addition, two] times the amount of actual damages; or

(2) an order enjoining such acts or failure to act; or

(3) any other relief which the court deems proper.

(c) On a finding by the court that an action under this section was groundless and brought in bad faith or brought for the purpose of harassment, the court shall award to the defendant reasonable and necessary attorneys' fees and court costs.

(d) All actions under this Article must be commenced within two years after the date on which the unfair method of competition or unfair or deceptive act or practice occurred or within two years after the person bringing the action discovered or, in the exercise of reasonable diligence, should have discovered the occurrence of the unfair method of competition or unfair or deceptive act or practice. The period of limitation provided in this section may be extended for a period of 180 days if the person bringing the action proves that the failure to timely commence the action was caused by the defendant's engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

(e) As a prerequisite to filing a suit seeking damages under this section against any person, the person seeking damages shall give written notice to the other person at least 60 ~~[30]~~ days before filing suit. The notice must advise the person of the specific complaint and the amount of actual damages and expenses, including any attorneys' fees reasonably incurred in asserting the claim against the defendant.

(f) If giving 60 ~~[30]~~ days' written notice is impracticable because the suit

must be filed in order to prevent the expiration of the statute of limitations or because the claim is asserted as a counterclaim, the notice provided for in Subsection (e) of this section is not required~~[- and the tender of a written offer of settlement provided for by Subsection (g) of this section may be made not later than the 30th day after the date of filing of the suit or counterclaim].~~

(g) A person against whom a suit is pending who does not receive written notice, as required by Subsection (e) of this section, may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the suit is pending. This subsection does not apply if Subsection (f) of this section applies [A person who receives the written notice provided by Subsection (e) of this section may tender, not later than the 30th day after the date of receipt of the notice, to the person seeking damages, a written offer of settlement, including an agreement to reimburse the person for any attorneys' fees reasonably incurred in asserting the claim to the date of the written notice. A person who does not receive a written notice because the suit or counterclaim is filed as provided for by Subsection (f) of this section may tender, not later than the 30th day after the date of filing of the suit or counterclaim, a written offer of settlement, including an agreement to reimburse the person for any attorneys' fees reasonably incurred in asserting the claim to the date the suit or counterclaim was filed. An offer of settlement is rejected if it is not accepted on or before the 30th day after the date of receipt by the person seeking damages].

(h) The court shall abate the suit if the court, after a hearing, finds that the person is entitled to an abatement because notice was not provided as required by this section. A suit is automatically abated without the order of the court beginning on the 11th day after the date a plea in abatement is filed under Subsection (g) if the plea in abatement:

(1) is verified and alleges that the person against whom the suit is pending did not receive the written notice as required by Subsection (e); and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the date on which the plea in abatement is filed [A rejected settlement offer made in compliance with Subsection (g) of this section may be filed with the court with an affidavit certifying its rejection. If the court finds that the amount tendered in the settlement offer is the same or substantially the same as the actual damages found by the trier of fact, the plaintiff may not recover an amount that exceeds the lesser of:

[(1) the amount tendered in the settlement offer; or

[(2) the amount of actual damages found by the trier of fact].

(i) An abatement under Subsection (h) continues until the 60th day after the date that written notice is served in compliance with Subsection (e) [The tender of an offer of settlement is not an admission of engaging in an unlawful act or practice or of liability under this Article. Evidence of a settlement offer may be introduced only to determine the reasonableness of the settlement offer as provided for by Subsection (h) of this section].

SECTION 14. Article 21.21, Insurance Code, is amended by adding Sections 16A and 16B to read as follows:

Sec. 16A. OFFERS OF SETTLEMENT. (a) A person who receives notice under Section 16(e) of this article may tender an offer of settlement at any time



during the period beginning on the date notice is received and ending on the 60th day after that date.

(b) If a mediation under Section 16B of this article is not conducted, the person may tender an offer of settlement at any time during the period beginning on the date an original answer is filed and ending on the 90th day after that date.

(c) If a mediation under Section 16B of this article is conducted, a person against whom a claim under Section 16 of this article is pending may tender an offer of settlement during the period beginning on the day after the date that the mediation ends and ending on the 20th day after that date.

(d) An offer of settlement tendered by a person against whom a claim under Section 16 of this article is pending must include an offer to pay the following amounts of money, separately stated:

(1) an amount of money or other consideration, reduced to its cash value, as settlement of the claim for damages; and

(2) an amount of money to compensate the claimant for the claimant's reasonable and necessary attorneys' fees incurred as of the date of the offer.

(e) Unless both parts of an offer of settlement required under Subsection (d) of this section are accepted by the claimant not later than the 30th day after the date the offer is made, the offer is rejected.

(f) A settlement offer tendered by a person against whom a claim under Section 16 of this article is pending that complies with this section and that has been rejected by the claimant may be filed with the court with an affidavit certifying its rejection.

(g) If the court finds that the amount tendered in the settlement offer for damages under Subsection (d)(1) of this section is the same as, substantially the same as, or more than the damages found by the trier of fact, the claimant may not recover as damages any amount in excess of the lesser of:

(1) the amount of damages tendered in the settlement offer; or

(2) the amount of damages found by the trier of fact.

(h) If the court makes the finding described by Subsection (g) of this section, the court shall determine reasonable and necessary attorneys' fees to compensate the claimant for attorneys' fees incurred before the date and time of the rejected settlement offer. If the court finds that the amount tendered in the settlement offer to compensate the claimant for attorneys' fees under Subsection (d)(2) of this section is the same as, substantially the same as, or more than the amount of reasonable and necessary attorneys' fees incurred by the claimant as of the date of the offer, the claimant may not recover attorneys' fees greater than the amount of fees tendered in the settlement offer.

(i) If the court finds that the offering party could not perform the offer at the time the offer was made or that the offering party substantially misrepresented the cash value of the offer, Subsections (g) and (h) of this section do not apply.

(j) If Subsection (g) of this section does not apply, the court shall award damages as required by Section 16(b) of this article. If Subsection (h) of this section does not apply, the court shall award attorneys' fees as required by Section 16(b) of this article.

(k) An offer of settlement is not an admission of engaging in an act or



practice declared in Section 4 of this article to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

Sec. 16B. MEDIATION. (a) A party may, not later than the 90th day after the date of service of a pleading in which relief under Section 16 of this article is sought, file a motion to compel mediation of the dispute in the manner provided by this section.

(b) The court shall, not later than the 30th day after the date a motion under this section is filed, sign an order setting the time and place of the mediation.

(c) If the parties do not agree on a mediator, the court shall appoint the mediator.

(d) Mediation shall be held within 30 days after the date the order is signed, unless the parties agree otherwise or the court determines that additional time, not to exceed an additional 30 days, is warranted.

(e) Except as agreed to by all parties who have appeared in the action, each party who has appeared shall participate in the mediation and, except as provided by Subsection (f), shall share the mediation fee.

(f) A party may not compel mediation under this section if the amount of actual damages claimed is less than \$15,000, unless the party seeking to compel mediation agrees to pay the costs of the mediation.

(g) Except as provided in this section, Section 154.023, Civil Practice and Remedies Code, and Subchapters C and D, Chapter 154, Civil Practice and Remedies Code, apply to the appointment of a mediator and to the mediation process provided by this section.

SECTION 15. Section 17(a), Article 21.21, Insurance Code, is amended to read as follows:

(a) If a member of the insurance buying public has been damaged by an unlawful method, act, or practice defined in Section 4 of this Article ~~or by the rules and regulations lawfully adopted by the Board under this Article or by any practice defined by Section 17.46 of the Business & Commerce Code, as amended;~~ as an unlawful deceptive trade practice, the Board may request the Attorney General to bring a class action, or the individual damaged may bring an action on behalf of himself and others similarly situated, to recover damages and relief as provided in this section.

SECTION 16. Section 33.002, Civil Practice and Remedies Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) This chapter does not apply to[:

~~[(1)]~~ an action to collect workers' compensation benefits under the workers' compensation laws of this state, Subtitle A, Title 5, Labor Code, [Article 8306 et seq., Vernon's Texas Civil Statutes] or actions against an employer for exemplary damages arising out of the death of an employee.

(c) This chapter applies to[:

~~[(1)]~~ [:

~~[(2)]~~ an action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) ~~[except as specifically provided in Section 17.50 of that Act]; [and [or]]~~

~~[(2) [(3)] an action brought under Chapter 21, Insurance Code.]~~

SECTION 17. This Act takes effect January 1, 1996, and applies only to a suit filed on or after that date. A suit filed before the effective date of this Act is governed by the law applicable to the suit immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 18. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

#### **Amendment No. 2**

Representative T. Hunter offered the following amendment to Amendment No. 1:

Amend Amendment No. 1 by Junell to **CSHB 668** as follows:

(1) On page 3, strike lines 21-27 and substitute the following:

Sec. 17.44. CONSTRUCTION AND APPLICATION. (a) This subchapter shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection.

(2) On page 4, strike lines 1-3.

Amendment No. 2 was adopted without objection.

#### **Amendment No. 3**

Representative T. Hunter offered the following amendment to Amendment No. 1:

Amend Amendment No. 1 by Junell to **CSHB 668** as follows:

(1) On page 4, line 17, between "awareness" and "of", insert ", at the time of the act or practice complained of,".

(2) On page 10, strike lines 8-10 and substitute the following:

(e) Except as specifically provided by this subsection and Section 17.50(h), nothing in this subchapter shall apply to a cause of action for bodily injury or death or for the infliction of mental anguish. A consumer may recover damages under this subchapter for mental anguish if the trier of fact finds that the conduct of the defendant was committed knowingly.

(3) On page 10, line 24, strike "\$250,000" and substitute "\$500,000".

Amendment No. 3 was adopted without objection.

#### **INTERPRETER FOR THE DEAF**

The interpretation of the proceedings of the house was provided today by Sandra Rouse

#### **CSHB 668 - (consideration continued)**

#### **Amendment No. 4**

Representative T. Hunter offered the following amendment to Amendment No. 1:

Amend Amendment No. 1 by Junell to **CSHB 668** on page 41, lines 8-12, by striking SECTION 17 of the bill and substituting the following:

SECTION 17. This Act takes effect September 1, 1995, and applies to all causes of action that accrue on or after that date. This Act applies to all causes of action that accrued before the effective date of this Act and upon which suit is filed on or after September 1, 1996. A cause of action that accrued before the effective date of this Act and upon which suit is filed prior to September 1, 1996, is governed by the law in effect immediately prior to the effective date of this Act and that law is continued in effect for that purpose.

Amendment No. 4 was adopted without objection.

### **Amendment No. 5**

Representative Brimer offered the following amendment to Amendment No. 1:

Amend Amendment No. 1 by Junell **HB 668** in the following way:

(1) Add two new Sections \_\_\_\_ to read as follows:

SECTION \_\_\_\_\_. Amend Title 79, Chapter 11 (Texas Revised Civil Statutes, Article 5069-11.01, subsections (a), (c), and (e) and adding a new subsection (q)) is amended to clarify the intent of the statute as follows:

(a) using any name while engaged in the collection of debts other than the true business or professional name or the true personal or legal name of the debt collector, or, if engaged in the collection of a credit card debt, the name appearing on the face of the credit card; or failing to maintain a list of all business or professional names known to be used or formerly used by individual persons collecting debts or attempting to collect debts for the debt collector.

(c) failing to clearly disclose, in any communication with the debtor, the name of any of the persons to who the debt has been assigned or is owed at the time of making any demand for money (provided, however, this subsection shall not apply to persons servicing or collecting real estate first lien mortgage loans or credit card debts);

(e) using any written communication which fails to clearly indicate the name of the debt collector and the debt collector's street address or post office box and telephone number, when the written notice refers to an alleged delinquent debt; (the foregoing shall not require disclosure of names and addresses of employees of debt collectors);

(q) All changes made to this Act by any act of the 74th Legislature shall apply to any civil action pending on or after the effective date of the enactment of these changes.

SECTION \_\_\_\_\_. Amend Title 79, Chapter 11 (Texas Revised Civil Statutes, Article 5069-11.10 (c) and adding a new (d)) is amended to clarify the intent of the statute as follows:

(c) A person who successfully maintains an action under this article for violation of Article 11.02(c) or 11.07A of this Act shall be awarded at least \$100 for each violation of this Act.

(d) All changes made to this Act by any act of the 74th Legislature shall apply to any civil action pending on or after the effective date of the enactment of these changes.

Amendment No. 5 was adopted without objection.

Amendment No. 1, as amended, was adopted without objection.

**CSHB 668**, as amended, was passed to engrossment.

### **HR 762 - ADOPTED**

Representative Hilbert moved to suspend all necessary rules to take up and consider at this time **HR 762**.

The motion prevailed without objection.

The speaker laid before the house the following resolution:

By Hilbert,

**HR 762**, In memory of Special Agent Kelly E. Harris.

The resolution was unanimously adopted by a rising vote.

### **COMMITTEE MEETING ANNOUNCEMENTS**

The following committee meetings were announced:

Licensing and Administrative Procedures, on adjournment today, E1.026, Capitol Extension.

Public Health, on adjournment today, Desk 138.

County Affairs, on adjournment today, Desk 3.

Juvenile Justice and Family Issues, 7 p.m. today, to consider the posted agenda.

### **ADJOURNMENT**

Representative Williamson moved that the house adjourn until 10 a.m. tomorrow.

The motion prevailed without objection.

The house accordingly, at 5:39 p.m., adjourned until 10 a.m. tomorrow.

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## **APPENDIX**

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### **STANDING COMMITTEE REPORTS**

Favorable reports have been filed by committees as follows:

Agriculture and Livestock - **SB 1146, SB 1173**

Civil Practices - **HB 632, HB 1496, HB 1709, HB 1809, HB 2420**

County Affairs - **HB 939, HB 2030, HB 2138, HB 2345, HB 2926**

Criminal Jurisprudence - **HB 236, HB 367, HB 580, HB 1395, HB 2418, HB 2558, HB 2949, SB 1349**

Economic Development - **HB 2885**

Environmental Regulation - **HB 2479, HB 3220**

Financial Institutions - **SB 1032, SJR 46**

Insurance - **HB 2952, HB 3111, SB 1284**

Juvenile Justice and Family Issues - **HB 647, HB 2262**

Land and Resource Management - **HB 272, HB 1300, HB 1710, HB 2977**

Licensing and Administrative Procedures - **HB 819, HB 1051, HB 1342, HB 1541, HB 2080, HB 2429, HB 2600, HB 2784, HB 3139, HB 3140, SB 237, SB 266, SB 538, SB 686, SB 739, SB 914, SB 1414**

Pensions and Investments - **HB 411, HB 1875, HB 2563**

Public Health - **HB 1373, HB 1456, SB 600, SB 601, SB 602, SB 604, SB 605**

Public Safety - **HB 1448, HB 2899, HB 3017**

State Affairs - **HB 812, HB 2266, HB 2490**

Transportation - **SB 1633**

Urban Affairs - **HB 375, HB 1685, HB 2100, HB 2325**

Ways and Means - **HB 2275, HB 2319, HB 2608, HB 3155, SB 1654, HJR 107, SJR 36**

#### **ENGROSSED**

May 2 - **HB 3072**

#### **ENROLLED**

May 2 - **HB 921, HB 1264, HCR 189**

#### **SENT TO THE GOVERNOR**

May 3 - **HB 921, HB 1264, HCR 189**

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